(25,791)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1917.

No. 419.

HENRY G. S. NOBLE, AS PRESIDENT OF THE NEW YORK STOCK EXCHANGE, APPELLANT,

vs.

THE WESTERN UNION TELEGRAPH COMPANY, CALVIN H. FOSTER, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

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No. 738, Equity Docket.

HENRY G. S. NOBLE, Plaintiff,

v.

WESTERN UNION TELEGRAPH COMPANY et al., Defendants.

The Bill of Complaint in this cause was filed in the clerk's office on the sixth day of July, A. D. 1916, and is in the words and figures following:

2 *Bill of Complaint.*

[Filed July 6, 1916.]

HENRY G. S. NOBLE, as President of the New York Stock Exchange, a Voluntary Unincorporated Association, Suing on His Own Behalf and on Behalf of All the Other Members of said Association, Complainant,

against

THE WESTERN UNION TELEGRAPH COMPANY and CALVIN H. FOSTER, Defendants.

To the Honorable Judge of the District Court of the United States for the District of Massachusetts:

The Complainant above named brings this his bill of complaint against the Western Union Telegraph Company a corporation organized and existing under the Laws of the State of New York doing business in the District aforesaid, and Calvin H. Foster a citizen and resident of the State of Massachusetts and District aforesaid and alleges upon information and belief as follows:

1. The New York Stock Exchange is a voluntary unincorporated association having more than one thousand members authorized by the Laws of the State of New York to sue and be sued in the name of its President; one of the objects of said association is to furnish Exchange Rooms and other facilities for the convenient transaction of their business by its Members and brokers. Its Exchange Rooms are situated in the Borough of Manhattan, City of New York, and are maintained by the Stock Exchange as a place where its Members may daily gather for the purpose of buying and selling to each other certain corporate stocks, bonds and other securities which have been approved and listed for trading purposes by said Exchange.

3 Henry G. S. Noble is President of the New York Stock Exchange and brings this bill of complaint as such President

and also on his own behalf and on behalf of all the other Members of said Association.

The Western Union Telegraph Company is a corporation organized and existing under the Laws of the State of New York and transacting a telegraph business throughout the United States.

2. That said Exchange Rooms are maintained by said New York Stock Exchange and are open for trading by Members from ten o'clock A. M. until three o'clock P. M. of each business day except Saturday, when such Exchange closes at twelve o'clock M., and that during all of said hours of each day all its Members do gather there, and buy from and sell to each other large quantities of said stocks and other securities, and all trading is done by open viva voce bidding between Members, and that none but Members of said Exchange are permitted to participate in such trading or bidding; and that none but such Members (and their employees) and the employees of said Stock Exchange are permitted to enter upon the floor of said Exchange during said market hours.

3. That the promptly acquired knowledge of the prices made from time to time in said bidding is of special value to the Members of said Exchange and such of their customers as desires to purchase said stocks, bonds or securities of said Exchange and to the banks with which said Members have occasion to transact their business and that for the purpose of making such knowledge immediately available, said Stock Exchange at a yearly expense of upwards of $42,000 employs a number of persons to attend the place where such bidding is taking place in such Exchange Hall during said market hours, and to immediately note upon slips of paper the price of each transaction made upon said Exchange and to cause said
4 prices to be immediately delivered to telegraph operators there employed by said Stock Exchange, whose duty it is to transmit, and who do immediately transmit, said quotations to a room in said Exchange building set apart for that purpose, and that said prices so noted, gathered and transmitted, constitute what are known as the continuous market quotations of said New York Stock Exchange; and that from said room said Stock Exchange through agencies provided by it for that purpose, does transmit, and has for many years transmitted, over wires and by means of telegraph instruments known as "tickers" said quotations to such of its Members as desire to receive the same in that part of the City of New York known as the Borough of Manhattan, lying south of Chambers Street.

4. That for many years prior to the year, 1914, said Stock Exchange furnished said quotations to the Western Union Telegraph Company, which does a general telegraph business throughout the United States, under contracts, copies of which, and of the contracts extending the same are hereto attached and marked Exhibits A1, A2, A3, A4, A5, A6, A7, A8, A9, A10, A11, A12, and A13. That such distribution of said quotations through said telegraph companies resulted in the creation of a large number of bucket shops throughout the United States, which obtained said market quotations from said telegraph company and used the same as the basis

for making bets upon the fluctuations of prices of the stocks covered by said market quotations.

5. That in the year 1909, the Hon. Charles E. Hughes the Governor of the State of New York appointed a Commission to inquire into the subject of speculation in securities and commodities,
5 and that under date of June 7, 1909, said Commission made its report to said Governor, in which said Commission recommended that said Stock Exchange take such steps as were feasible to prevent the misuse of its said quotations in bucket shops.

6. That in conformity with said recommendation of said Hughes Commission, said Stock Exchange in the month of September of the year 1914, terminated its existing contracts with said telegraph companies for the distribution of said quotations, and entered into a new contract dated July 1st, 1914, with said Western Union Telegraph Company acting for itself and as lessee of the Gold & Stock Telegraph Company, in and by which said contract said Exchange agreed at its own expense to furnish to said telegraph company full and continuous quotations of prices made in said transactions in said Exchange Rooms; and said contract authorized said telegraph company to furnish said quotations to any person, whether a Member of the Exchange or not, anywhere in the United States and Canada, outside of that portion of the Borough of Manhattan lying south of Chambers Street; and also to furnish the same by ticker to any person who is not a member of said Exchange, south of said Chambers Street, provided, that said telegraph company should not, after the first day of November, 1914, furnish quotations by ticker or otherwise, in the volume of a continuous service, which is defined to be oftener than at intervals of fifteen (15) minutes (and is in said contract referred to as continuous quotations) to any subscriber therefor, who shall not have signed in duplicate an application therefor, addressed to the telegraph company, and who shall not have been approved by the
6 Exchange, said application to be substantially as follows:

Application for Continuous Quotations of the New York Stock Exchange.

——, 191—.

The Western Union Telegraph Company:

We hereby apply to you for a service of continuous quotations of the New York Stock Exchange, furnished you under contract between you and said Exchange, said quotations to be furnished to us at —— by —— ——; and we represent and agree with you as follows:

1. That our business is and shall be the business of —— —— and that said business is conducted under the firm name and style of —— and that notice of any change of the name, nature or place of said firm or business shall at once be given to the said Western Union Telegraph Company; and that we are not keeping or causing to be kept, and will not keep or cause to be kept, or be in any wise interested in, or in any way assist or promote, any bucket-shop or bucket-

shop business, or any office, store or other place wherein is conducted or permitted the business of making, or offering to make, contracts, agreements, trades or transactions, either orally or in writing, respecting the purchase or sale (or the purchase and sale) of any stocks, bonds or other securities or commodities wherein both parties, or the party maintaining such office or place or conducting such business, or the undersigned, contemplate or intend that such contracts, agreements, trades, or transactions shall, or may be, closed, adjusted or settled according, or with reference, to the quotations of any Exchange, Board of Trade, or market place, upon which stocks, bonds or other securities or commodities are dealt in; or otherwise than by an actual bona fide transaction or purchase or sale; or wherein both parties or the party maintaining such office or place or conducting such business or the undersigned contemplate or intend that such contracts, agreements, trades or transactions shall, or may, be closed or terminated when the quotations of some such Exchange, Board of Trade, or market place respecting the stocks, bonds or other securities or commodities specified in such contracts, agreements, trades or transactions shall reach a certain figure; and we agree that we will not use, or allow anyone else to use, such quotations or any of them for any such purpose or in any such bucket-shop, office or place.

2. That said quotations are to be received by us only for our private and individual use in our said business at the office or place above designated; and that we will not communicate or otherwise furnish or permit to be communicated or otherwise furnished, said quotations to any news distributing company or telegraph company, or any person or corporation, nor to any other place than that above designated, nor allow any person or corporation whatsoever to take directly or indirectly said quotations from said office. But nothing herein contained shall preclude us from furnishing said quotations to any branch office of ours, nor to any of our correspondents, provided that said branch office or offices shall first be approved by the New York Stock Exchange, and further provided that before furnishing said quotations to any such correspondent such correspondent shall be approved by the New York Stock Exchange, and we shall first obtain in duplicate (one of which shall be delivered to you and one to the New York Stock Exchange) an agreement signed by such correspondent in which said correspondent shall agree with the Western Union Telegraph Company to abide by and comply with clauses 1, 2, 3, 4 and 7 hereof. If the undersigned shall furnish, or permit to be furnished, said quotations, or any of them, to any person, firm or corporation excepting after compliance with the provisions hereinbefore contained, the undersigned hereby agrees that the Western Union Telegraph Company may sue the person, firm or corporation to whom said quotations or any of them are thus furnished to prevent the receipt or use thereof by said person, firm or corporation without making the undersigned a defendant thereto, provided the undersigned does not, or in cases of a partnership all the members thereof do not, reside within the jurisdiction of the Court in which said suit is brought.

(3) That the office or place above designated shall not be connected by any private telegraph or telephone wire, or other wire con-

nection, or other means of communication with the office or place of business of any person or persons, or corporation, engaged in the business of making contracts, agreements, trades or transactions respecting the purchase and sale of stocks, bonds or other securities or commodities, or with any place where such business is conducted, unless the New York Stock Exchange shall have been notified of such connection and shall not have disapproved the same; nor with any branch office or correspondent excepting such branch offices and correspondents as have been approved by the New York Stock Exchange as provided in Clause 2 hereof. But nothing in this clause contained shall be construed as applying to the private wire connections of members of the New York Stock Exchange which have been approved in conformity with its rules.

(4) That at any and all times any person or persons designated by the said Telegraph Company or the said New York Stock Exchange shall have access to the office or place above designated, and the right to observe the use made of said quotations, and to examine and inspect all instruments and apparatus used in connection with the said service in said office or place.

(5) That the Western Union Telegraph Company may, with or without notice, forthwith discontinue said service whenever in its judgment there shall have been any breach of the foregoing agreements, or any of them, by the undersigned, or whenever directed so to do by said New York Stock Exchange.

(6) That the Western Union Telegraph Company shall not be pecuniarily liable for the accuracy of the quotations which it may furnish under this application, nor for any delays, inaccuracies, errors or omissions in said quotations, or for any damages arising therefrom or occasioned thereby.

(7) That quotations upon any stock, bond or other security at intervals of fifteen (15) minutes or less shall be deemed to be continuous quotations within the meaning of this application.

——— ———.
——— ———.

Accepted:
THE WESTERN UNION TELEGRAPH COMPANY,
By ——— ———.

Applicant Approved:
NEW YORK STOCK EXCHANGE,
By ——— ———.

[Endorsed:] Application for Continuous Quotations of the New York Stock Exchange.

7 and it was by said contract expressly provided that one of said applications, when signed by said applicant, should be delivered to the said Exchange, but that said application and acceptance thereof by the telegraph company should not be effectual for any purpose until each subscriber should be approved by said Exchange; it

being by said contract provided that, in case any person whose application has been accepted, shall fail to comply with the conditions, restrictions and limitations contained in the application signed by him, said telegraph company, at its own cost and expense, would terminate the contract between him and said telegraph company, and the furnishing to him of said quotations thereunder; and it was further provided by said contract that said Exchange should receive from said telegraph company the sum of $50,000. a year; a copy of which said contract is hereto attached and made a part of this bill as Exhibit B, as fully as if set out at length in this bill.

7. That said contract has been since the 14th day of September 1914, and still is in full force and effect, and said market quotations have since said date and now are furnished to said telegraph company only in the manner prescribed in said contract, and your orator is informed and believes and avers that said telegraph company is now distributing the same only in strict compliance with the terms of said contract and is not now furnishing said continuous quotations to any person who has not signed an application and whose application has not been approved by said Stock Exchange as in said contract provided.

8 8. That on or about the 14th day of September, 1914, the defendant, Calvin H. Foster signed and delivered to said Western Union Telegraph Company an application in the form set out in said contract which said application was by said telegraph company forwarded to said Stock Exchange for its action as provided in said contract; that said Stock Exchange caused an investigation to be made into the business associations of said Foster, notifying said Foster to appear before one of the Committees of the Exchange and giving him a full and fair hearing before said Committee; that as a result of such careful and impartial investigation and Exchange has reached the conclusion that said Foster had been for a number of years engaged in conducting bucket-shops in the City of Boston and State of Massachusetts and desires said quotations for that purpose, and your orator and said Exchange are informed and believes that said Foster through said application desires to obtain said quotations for the purpose of either using the same in conducting a bucket-shop or for the purpose of selling said quotations to persons who are conducting bucket-shops and desire said quotations for use therein, and as a result of such investigation and because of its conclusion as to the purpose of said Foster, said Stock Exchange on the 16th day of April, 1915, notified said Western Union Telegraph Company that the application of said Foster as set forth had been disapproved and your orator is informed and believes that by reason of said notice and not otherwise the Western Union Telegraph Company has refused to furnish said Foster with said continuous quotations.

9 9. That on or about the 4th day of March, 1915, the defendant Calvin H. Foster filed with the Public Service Commission of the State of Massachusetts his complaint alleging his inability to obtain either from the United Telegram Company or the Gold & Stock Telegraph Company a ticker furnishing quotations made on the New York Stock Exchange, although he had made

proper application therefor to both companies and offered to pay the charges for this service, a copy of which complaint is hereto attached and marked Exhibit C, and made a part hereof; that thereafter said Public Service Commission caused a copy of said complaint to be served upon the said United Telegram Company and the Gold & Stock Telegraph Company and that on the 15th day of April 1915, said Western Union Telegraph Company on behalf of said Gold & Stock Telegraph Company, of which said Western Union Telegraph Company is the lessee, made answer to said complaint, a copy of which is hereto attached and made a part hereof as Exhibit D, except as to Exhibits thereof which are elsewhere hereto attached, and said United Telegram Company also made a similar answer to said complaint; and that thereafter on the 7th day of September, 1915, said Public Service Commission made and entered upon its records an order that said Gold & Stock Telegraph Company by said Western Union Telegraph Company lessee, and the said United Telegram Company had without just cause denied and refused to supply said Calvin H. Foster the continuous quotations of the New York Stock Exchange by means of ticker service now furnished and supplied to others and ordering said two telegraph companies to forthwith remove said discrimination; that thereafter and on the 27th day of September, 1915, said Western Union Telegraph Company and
10 said United Telegram Company, joined in a petition in the Supreme Court of Massachusetts for the County of Suffolk, under the provisions of the Statute of the State of Massachusetts enacted in the year 1913, against said Calvin H. Foster and the Members of said Public Service Commission praying that said ruling and order of said Commission be annulled and on the 15th day of April, 1915, the Members of said Public Service Commission pursuant to said Statute also filed in said Supreme Court their bill of complaint against said Western Union Telegraph Company and said United Telegram Company and setting up said order of said Commission and praying for a decree enjoining said two telegraph companies to furnish said Foster said quotations by means of ticker service upon his making due payment therefor. That on the first day of December, 1915, said Supreme Court entered an order or reservation consolidating said two causes and reserving all questions of law therein for consideration of the full Court and pursuant to the practice of the State of Massachusetts and that thereafter said two causes came on for argument before said full Court and said Court rendered a decision and entered an order in said causes dismissing said petition of said Telegraph Companies with costs and directing a decree to be entered upon the order of said Public Service Commission to enjoin said telegraph companies to comply with the order of said Public Service Commission.

10. That said continuous quotations of said Stock Exchange, after being collected by said Stock Exchange and after being received by said Western Union Telegraph Company in the City of New York as aforesaid, are by said telegraph company transmitted to the City of Boston, Massachusetts, over one of its telegraph
11 wires running from its office in the City of Boston, such wire during said market hours of said Stock Exchange being used

exclusively for the transmission of said stock quotations; that at the City of Boston end of said telegraph wire an operator in the employ of said Western Union Telegraph Company receives said quotations and immediately writes the same on slips of paper, which are immediately handed to another employee of said Western Union Telegraph Company in its said office in Boston, who operates an instrument known as a ticker transmitter, from which wires run to the instruments known as tickers in the offices of brokers and others in the city of Boston, who desire to receive said quotations, and whose applications therefor have been approved by said Stock Exchange as aforesaid, said tickers being so constructed as to print consecutively upon automatically unrolling roll of paper tape in letters and figures the names of the stock and the price therefor in each such transaction upon the said New York Stock Exchange; that said transmission of said quotations from New York over said wire and the retransmitting thereof as aforesaid at the City of Boston through said ticker transmitter and the printing thereof of all of said tickers in the City of Boston, begins immediately after the opening of the market of said New York Stock Exchange at ten o'clock A. M., and is thence continued uninterruptedly until the closing of said market on that day, and that in said method of transmission from New York and distribution in the City of Boston, the identical market news or quotations, which are so sent out from New York upon said wire, pass over each of said ticker wires and are printed upon each of said tickers, and your orator claims that the
12 said transmission and distribution of said quotations as aforesaid is interstate commerce within the meaning of the Constitution of the United States conferring on Congress the exclusive right to regulate interstate commerce; that Congress by amendment to the Act of Congress entitled "An Act to regulate Commerce" of February 4th, 1887, passed June 18th, 1910, has vested in the Interstate Commerce Commission exclusive jurisdiction of all proceedings, suits or actions affecting or controlling the distribution of said quotations and that the Statute of the State of Massachusetts creating such Public Service Commission and conferring thereon jurisdiction to hear complaints respecting the distribution of said quotations and the order of said Commission directing the delivery of said quotations to said Foster as well as the order of said Supreme Court confirming said order of said Public Service Commission are void.

11. Your orator is informed and believes and charges that said Western Union Telegraph Company intends to and will comply with said order of said Public Service Commission as soon as said confirming order of said Court becomes operative and will in obedience to said order furnish to said Foster said continuous quotations.

12. That your orator and said Stock Exchange claim that said market quotations when collected and distributed as above stated constitute the property of the New York Stock Exchange and that being its property said Stock Exchange may fix a price at which it will sell said property and select the persons to whom it will furnish the same and that it has the right to avail itself of the services of any common carrier operating either wholly within the State

13 or beyond the limits of a single state for the purpose of delivering its said quotations to persons whose application therefor it shall accept, and that said Statute creating and conferring power upon said Commission and the order of said Commission and the confirming order of said Supreme Court—which are based upon such Statute—and which require said Western Union Telegraph Company to break its contract with said Stock Exchange by giving said quotations to said Foster are and each of them is in violation of the Constitution of the United States in that they deprive said Stock Exchange of its said property without due process of law.

13. Your orator further avers that the amount here involved and the matters here in dispute exclusive of interest and costs is much more than the sum of Three thousand ($3,000.) Dollars.

In tender consideration whereof and forasmuch as your orator is remediless in the premises, except in a Court of Equity, where matters of this nature are properly cognizable and relievable, and to that end your orator prays that said Western Union Telegraph Company and Calvin H. Foster who are made defendants to this bill may true, direct and complete answer make to this bill, but not under oath (answer under oath being hereby waived); and

1. That said Statute of Massachusetts creating and conferring powers upon said Public Service Commission so far as the same confers authority or power upon said Commission to make or enforce its said order or any other order directing said Western Union Telegraph Company to furnish said quotations to said Calvin H.
14 Foster be adjudged and declared to be in violation of the Constitution of the United States, and

2. That said order entered on the 7th day of September, 1915, by said Commission directing said Western Union Telegraph Company to furnish said Foster said quotations be adjudged null and void and as constituting no excuse or reason why said Western Union Telegraph Company should not as respects to said Foster comply with its contract with said Stock Exchange, and

3. That a temporary injunction may immediately issue and upon the final hearing hereof be made perpetual, restraining said Western Union Telegraph Company from delivering to said Foster and said Foster from receiving from said Western Union Telegraph Company said continuous quotations of said New York Stock Exchange until said Foster shall have first lawfully acquired the right to receive said quotations either by contract or purchase from said Stock Exchange or with its consent and approval from a telegraph company authorized by said Stock Exchange to distribute said quotations, and further enjoining said Foster as a member of any firm or as an agent or officer of any person, firm or corporation from aiding, abetting or assisting directly or indirectly any person, firm or corporation in receiving, using, selling or distributing said quotations until such person, firm or corporation shall have first lawfully acquired the right to receive said quotations as aforesaid, and

4. That your orator and said Stock Exchange may have such other and further relief in the premises as will fully protect said Stock Exchange's property right in said quotations and to your Honor shall seem meet.

May it please your Honor to grant unto your orator a preliminary and permanent injunction against the said defendants as above prayed, and also a writ of subpœna of the United States directed to said Western Union Telegraph Company and said Calvin H. Foster commanding them on a day certain to appear and answer this bill and to abide by and perform such decree as may be entered by this Court.

WALTER F. TAYLOR,
HENRY S. ROBBINS,
Of Counsel.
HENRY L. SHATTUCK,
Of Counsel.

SOUTHERN DISTRICT OF NEW YORK,
City and County of New York, ss:

Henry G. S. Noble being duly sworn deposes and says that he is the complainant in the above entitled bill and is President of the New York Stock Exchange; that he has read the foregoing bill and knows the contents thereof and that the allegations of said bill are true of his own knowledge except as to the matters therein stated to be on information and belief and as to those matters he believes them to be true.

HENRY G. S. NOBLE.

Sworn to before me this 5th day of July, 1916.

[SEAL.] J. M. RICHARDSON LYETH,
Notary Public, Bronx County.

County Clerk's No. 24, Register's No. 700. Certificate filed in New York County. County Clerk's No. 17, Register's No. 7050. Term expires March 30, 1917.

EXHIBIT A 1.

This Agreement, made and entered into this 19th day of November, 1892, by and between the Western Union Telegraph Company, acting for itself and as Lessee of the Gold and Stock Telegraph Company, hereinafter designated as the "Telegraph Company," party of the first part, and the New York Stock Exchange, hereinafter designated as the "Stock Exchange," party of the second part:

Whereas the Telegraph Company has made application to the Stock Exchange for the privilege of receiving, for distribution to its customers, the quotations of prices and reports of transactions occurring upon the New York Stock Exchange, and said Stock Exchange is willing to grant said privilege to said Telegraph Company upon the terms hereinafter set forth:

Now therefore, this Agreement Witnesseth:

That in consideration of the premises and of the covenants and agreements herein contained, the parties hereto have mutually agreed as follows:

First. The Stock Exchange agrees at its own cost and expense, to collect, furnish and transmit to the Telegraph Company in the manner hereinafter provided, for distribution by the Telegraph Company, as hereinafter provided, full and continuous reports of the current transactions, news, quotations and statistics made or originating in the Stock Exchange of such things as are, or may be dealt in by the members thereof during the hours for trading prescribed by its rules, and also the changes which may occur in the same from time to time. Said reports shall embrace such quotations and other information as have heretofore been usually supplied by said
18 Exchange to the Gold and Stock Telegraph Company and while the said Stock Exchange does not guarantee that the same shall be absolutely accurate or shall embrace all the transactions occurring or originating in said Exchange, it will nevertheless use reasonable diligence to make the same as full, complete and accurate as may be practicable.

The Stock Exchange shall furnish booths and instruments on the floor of its Exchange and wires connecting said instruments with the Telegraph Company's wires in the basement of the Exchange, or at such other point in said building as may be determined by the Committee of Arrangements of said Exchange; and the Telegraph Company shall be permitted to connect its wires from said building to its Commercial News Department and its main office; and the Stock Exchange shall by its own operators transmit said repoots hereinbefore provided for from said booths on the floor of its Exchange, directly and promptly over its wires, and the Telegraph Company shall receive the same over its said wires by its own operators. The wires of the Telegraph Company connecting with those of the Stock Exchange shall not be connected with any other wires, by repeater or other device, but the reports shall be taken from them by operators of the Telegraph Company at its said main office and Commercial News Department, and shall be thence retransmitted by the Telegraph Company's operators over independent wires to its customers.

The Telegraph Company further agrees that the wires over which said reports are transmitted to its said main office and Commercial News Department, shall be so arranged and protected as to render the same, as far as possible, incapable of being tapped, and that the Telegraph Company shall use its utmost endeavors to prevent the said reports or any part thereof, being taken off said wires, or in any way diverted or distributed, prior to their being taken off at said
19 main office and Commercial News Department, as hereinbefore provided. The transmission of such reports to the Telegraph Company shall be simultaneous with, and shall be performed in like and equal manner and time with their transmission to the New York Quotation Company, and no preference shall be given either company in such service.

Second. The Telegraph Company shall have the right to serve said reports to members of the New York Stock Exchange at their offices north of Chambers Street in New York City, and shall also have the right to serve said reports to each Director of the Telegraph Company who is a member of the Stock Exchange on one ticker in the

office of any such Director, located south of Chamber- Street; but said Telegraph Company shall not serve said reports to any members of the Stock Exchange except as herein provided.

The Telegraph Company shall charge members of the Stock Exchange for the use of tickers delivering such reports in their offices, north of Chambers Street and south of Sixtieth Street in New York City, not exceeding Twenty-five dollars ($25.00) per month for each ticker.

The Telegraph Company shall also have the right to serve said reports to all persons, firms, corporations and organizations in New York City and elsewhere, wherever the Telegraph Company may desire to serve them, except to organizations or Exchanges in the City of New York competing with the New York Stock Exchange, and except to members of the Stock Exchange south of Chambers Street, New York City, and except to persons who may be, directly or indirectly, engaged in the promotion or maintenance of "bucket" shops; and the Telegraph Company will not contract to furnish tickers, and will not furnish tickers, to any person, firm corporation or organization in New York City not already having its instruments, until the application of such person, firm corporation or organization shall have been submitted to, and approved by at least three members of the Committee of Arrangements of the Stock Exchange; and as its existing contracts expire from time to time, it will not make renewals thereof, or continue to furnish service to such parties in New York City until their respective applications for such renewals have been in like manner submitted and approved. But these provisions shall be construed liberally to the Telegraph Company to the end that its service of, and revenue from, such reports shall not be unreasonably restricted, and that its patrons shall not be embarrassed. Such applications shall be acted upon promptly by said Committee of Arrangements.

The Telegraph Company shall not be required to remove any of its tickers which are under restraint by injunction of the Courts during the pendency of such injunction, but diligent efforts shall be made by the Telegraph Company to secure the removal of such injunctions, at its own cost and expense in cases in which the Stock Exchange may so desire or request. In the event that the Stock Exchange shall be dissatisfied with the conduct of the defense by the Telegraph Company in any such suit or action, the Stock Exchange shall, upon demand, have the right to conduct such defense by counsel of its own selection, in the name and at the expense of the Telegraph Company.

Third. Except for the purpose of distribution to members of the Stock Exchange south of Chambers Street in New York City by the New York Quotation Company, or by such other instrumentality as the Stock Exchange shall from time to time select, and for distribution in the City of Boston by the United Telegram Company, the Stock Exchange agrees that it will not grant the privilege of receiving and transmitting or using, nor will it furnish to any person, party, firm or corporation other than the Telegraph Company, any quotations, reports, news or statistics of transactions, trades

21 or dealings on said Exchange; nor will the Stock Exchange (so far as it can lawfully prevent the same) permit, suffer or allow any of its members to receive, use, transmit, distribute or deliver, for sale or distribution, any of the said quotations, reports, news or statistics of transactions, trades or dealings on said Stock Exchange, nor will said Stock Exchange do any act whereby any other person, firm or corporation than the Telegraph Company party hereto (except as above mentioned) shall acquire any right to receive, use, transmit, distribute or deliver, for sale or distribution, any of the said quotations, reports, news or statistics of transactions, trades or dealings on said Stock Exchange; but nothing herein contained shall be construed to apply to the publication and distribution by other than electrical devices, of quotation sheets and price lists of transactions on said Exchange.

For the purpose of protecting the Telegraph Company against the use of any quotations, reports, news or statistics of the Stock Exchange by parties not entitled to them, the Telegraph Company may prosecute by suit, injunction or other legal remedies proper and suitable for the prevention or stoppage of such competitive use either in its own name or in the name of the Stock Exchange or its proper officers, any party or parties obtaining or using said quotations, reports, news or statistics not entitled to them, whether obtained from the Stock Exchange or its members or employees, or otherwise; and in case the Telegraph Company shall sue and proceed in the name of the Stock Exchange, the Stock Exchange shall, by its proper officers, do all such proper acts and things, and sign all such proper and necessary papers, in order to enable the Telegraph Company to conduct proceedings with due diligence and effect. All such suits and other legal proceedings, whether carried on by the Telegraph Company in its own name or in the name of the Stock Exchange, shall be at the sole cost and expense of the Telegraph Company; and the Telegraph Company agrees to indemnify and save harm-
22 less the Stock Exchange of and from all damages, expenses, costs, charges and fees incurred in or arising out of any such suit or proceeding.

Fourth. As compensation for the privilege of receiving said quotations and reports, hereby granted by the Stock Exchange to the Telegraph Company, the Telegraph Company agrees to pay to the Stock Exchange the sum of Twenty-seven thousand dollars ($27,000,000) per annum, in equal installments of Two thousand two hundred and fifty dollars ($2,250.00) at the close of each month during the continuance of this agreement, and in case the Telegraph Company shall make default in the payment of any such instalment for the period of five days after the same becomes due, the Stock Exchange may forthwith terminate such privilege without notice.

In case the Stock Exchange shall at any time during the continuance of this agreement refuse to all other parties the right to receive, use, transmit and deliver its quotations, news and statistics in the City of Boston, and shall grant such privilege in Boston exclusively to the Telegraph Company party hereto, then and from henceforth for so long during the continuance of this agreement as said exclu-

sive privilege for the said City of Boston is continued by said Stock Exchange to the Telegraph Company party hereto, the monthly payment herein provided to be made by the Telegraph Company to the Stock Exchange shall be increased to the sum of Two thousand five hundred dollars ($2,500.00) per month.

Fifth. For the purposes of this agreement, the term, "member of the Stock Exchange" shall be construed to include any firm one or more of whose partners are members of the Stock Exchange.

Sixth. The Telegraph Company party hereto, agrees for itself and the Gold and Stock Telegraph Company on the one side, and the Stock Exchange agrees for the New York Quotation
23 Company on the other, that any improvements upon the instruments now in use by either of the said Companies which may be owned and introduced in the ticker service in New York City during the continuance of this contract by either of the said companies, may be used by the other of said companies in New York City during the continuance of this agreement free of charge, and in case any such improvement shall be introduced by either company under a licence or other arrangement short of ownership of the patent covering the same, the company availing itself of such license or other arrangement shall procure a similar license or other arrangement for the other company, to continue during the existence of this contract, in which case each company shall pay royalty under such license in the proportion that the number of its instrument using such improvements bears to the whole number *or* instruments of both parties on which such improvement is used, and in default thereof shall not be at liberty to use such improvements in its own service.

In case additional corporate action shall be required by any of the parties, such further action shall be obtained and such further agreements shall be executed as may be necessary for the carrying out of this provision according to its true intent, so that the actual expense and royalty under the license or other arrangement incurred by the company introducing the improvement shall be the measure of compensation to be paid by the other.

Seventh. The provisions of this agreement applicable to the New York Quotation Company shall apply from time to time to such other company, if any, as shall be substituted by the Stock Exchange for the said Quotation Company for serving its quotations, news and statistics to the members of said Stock Exchange south of Chambers Street in New York City.

24 Eighth. It being the intention of this agreement that the reports and quotations to be furnished by the Stock Exchange to the Telegraph Company shall be substantially such as have been furnished in the past by the Stock Exchange to the Gold and Stock Telegraph Company, and the nature of the business rendering it impossible to insure absolute accuracy or completeness in said reports, it is expressly understood that while the Stock Exchange will use reasonable diligence in collecting and transmitting said reports as fully, completely and accurately as may be practicable, yet it shall not be liable to the Telegraph Company, or any of its customers, for

any delays, inaccuracies, errors or omissions in said quotations or reports, or for any damages arising therefrom or occasioned thereby.

Ninth. The parties hereto agree that if any time hereafter, and before the expiration of this contract any dispute or difference shall arise between them concerning the true intent, meaning or construction of anything contained in this contract, or concerning any matter included within the spirit or scope thereof, or concerning the acts or omissions of the Stock Exchange or the Telegraph Company, then and so often as a dispute or difference shall arise, any and all such matters in difference shall be submitted and referred to the award and determination of three arbitrators to be chosen one by the Stock Exchange, another by the Telegraph Company, and the third by the two thus chosen, and the decision or award of any two of the arbitrators, in writing, shall be binding and final between the Stock Exchange and the Telegraph Company, and shall be carried out and performed by the said Stock Exchange or the Telegraph Company as the case may be.

Tenth. The provisions of this agreement shall take effect as of the first (1st) day of July, 1892, and shall be and continue in force for and during the full term of five (5) years from said date; and shall further continue after the expiration of said term, from year to year, unless either party shall give written notice of termination at least three months prior to the expiration of said term; and after the close of said fixed term of five years, either party may terminate this agreement at the end of any contract year after having given notice in writing of an intention to do so, at least three months before the close of such contract year.

In witness whereof, the parties hereto have hereunto set their hands and seals the day and year first above written.

THE WESTERN UNION TELEGRAPH COMPANY,

(Signed) By JNO. VAN HORNE, *Vice-President.*

(Signed) A. R. BREWER, *Secretary.*

THE NEW YORK STOCK EXCHANGE,

(Signed) By F. K. STURGIS, *President.*

(Signed) GEORGE W. ELY, *Secretary.*

EXHIBIT A2.

(A True Copy.)

New York, Nov. 26, 1894.

Gen'l Thomas T. Eckert, President, Western Union Telegraph Company.

DEAR SIR: Referring to our recent interview with you, I beg to submit our understanding of the modification agreed upon in rela-

tion to the method of transmission of the quotations of the Exchange to the transmitter located in the building of the Telegraph Company at Number 16 and 18 Broad Street.

It is that the following provision of Article First of the existing contract dated November 19th, 1892, viz.:

"The Stock Exchange shall furnish booths and instruments on the floor of its Exchange and wires connecting said instruments with the Telegraph Company's wires in the basement of the Exchange or at such other point in said building as may be determined by the Committee of Arrangements of said Exchange; and the Telegraph Company shall be permitted to connect its wires from said building to its commercial news department and its main office, and the Stock Exchange shall by its own operators transmit said reports hereinbefore provided for from said booths on the floor of its said Exchange directly and promptly over its wires, and the Telegraph Company shall receive the same over its said wires by its own operators."

be modified so as to read as follows:

"The Telegraph Company shall run a cable containing wires from its transmitting room at Number 16 and 18 Broad Street, to such place in the building of said Exchange as may be determined by the Committee of Arrangements, and shall furnish in the same
27 place a keyboard connected with said cable by means of which the transmitter located in the building of the Telegraph Company shall be operated."

"The Stock Exchange shall furnish booths and instruments on the floor of its Exchange and wires running from said instruments to a receiving instrument located at said place so to be determined.

"The Stock Exchange shall by its own operators transmit said reports hereinbefore provided for from said booths on the floor of its Exchange directly and promptly over its wires to said receiving instrument. The Telegraph Company shall by its operators take off said reports from said receiving instrument, and then convey the same to its said transmitter by means of the keyboard and cable aforesaid."

If our understanding as above is correct, kindly confirm the same.

Respectfully yours,

(Signed) GEORGE W. ELY, *Secty.*

EXHIBIT A3.

(A True Copy.)

[*Letterhead of the Western Union Telegraph Co.*]

New York, November 28th, 1894.

Geo. W. Ely, Esq., Secretary, New York Stock Exchange, New York City.

DEAR SIR: Replying to your note of yesterday, I beg to say that the proposed modification of the first Article of the agreement be-

tween your exchange and this company, of November 19th, 1892, which you propose, seems to us to cover the changed conditions of the service on the floor of the exchange, and it is accepted by the Western Union Telegraph Company.

I think that it is unnecessary for us to make a formal supplementary agreement covering this change, and that the filing of
28 your letter with the contract, with a copy of this acceptance, will be quite sufficient.

Yours truly,

(Signed) THOS. T. ECKERT, *President.*

EXHIBIT A4.

(A True Copy.)

March 15, 1897.

Thos. T. Eckert, Prest. & Genl. Mgr., Western Union Telegraph Company.

DEAR SIR: At a meeting of the Governing Committee of this Exchange, held on February 3d, 1897, the following resolution was unanimously adopted, viz:—

"That the New York Stock Exchange hereby elects and determines to terminate on the first day of July 1897, the contract dated November 19th, 1892, between the Western Union Telegraph Company acting for itself and as Lessee of the Gold and Stock Telegraph Company of the first part and the New York Stock Exchange of the second part, and that the Secretary of the Exchange be and he hereby is instructed to transmit a copy of this resolution to said Western Union Telegraph Company at least three months prior to said first day of July 1897."

Please acknowledge the receipt of this communication and oblige.

Yours truly,

(Signed) GEORGE W. ELY, *Secty.*

29 EXHIBIT A5.

(A True Copy.)

[*Letterhead of the Western Union Telegraph Company.*]

New York,

March 15th, 1897.

George W. Ely, Esq., Secretary, New York Stock Exchange, New York City.

DEAR SIR: I have to acknowledge receipt of your letter of this day's date, transmitting to me a copy of the resolution of the Governing Committee of the New York Stock Exchange in which notice is given to the Western Union Telegraph Company, acting for

itself and as lessee of the Gold and Stock Telegraph Company, of the intention of the New York Stock Exchange to terminate the agreement of November 19th, 1892, on the first day of July, 1897.

Yours truly,
(Signed) THOS. T. ECKERT,
President and General Mgr.

EXHIBIT A6.

(A True Copy.)

June 29, 1897.

To the Western Union Telegraph Co.

GENTLEMEN: The contract between the Western Union Telegraph Company and the New York Stock Exchange, dated November 19, 1892, relating to the quotations of the Exchange, will terminate on the 30th day of June, 1897.

Pending the making by the New York Stock Exchange of further or other arrangements with respect to its quotations, it is willing to continue said contract in force from day to day, after June 30th, 1897, in consideration of receiving from the Western Union Telegraph Company, for each day during which said contract shall be so continued in force, the sum of $90 payable at the close of business on each day, it being distinctly understood that all the provisions of said contract other than those relating to its duration, are to be and remain in force during such temporary continuation of the contract, but that the New York Stock Exchange or its Committee of Arrangements may at any time and without notice wholly discontinue and terminate said contract, and that upon such discontinuance or termination, all rights of the Western Union Telegraph Company thereunder shall forthwith cease and determine.

Kindly inform us to-day whether you accept the arrangement above proposed.

Respectfully yours,
(Signed) GEORGE W. ELY, *Secty.*

EXHIBIT A7.

(A True Copy.)

[*Letterhead of the Western Union Telegraph Company.*]

New York,

June 30th, 1897.

DEAR SIR: We are in receipt of your letter of the 29th instant, notifying the Western Union Telegraph Company that the New York Stock Exchange will continue the operation of the contract

of November 19th, 1892, between it and the company from day to day after June 30th, 1897, the company to pay to the Exchange therefor the sum of $90 at the close of business on each day, and the Exchange or its Committee of Arrangements to have the right to discontinue and terminate the said contract at any time without notice.

The Western Union Telegraph Company agrees to this proposal, reserving to itself, however, the same right of peremptory
31 discontinuance that the Exchange reserves to itself, and subject to the provision, as understood between your Committee of Arrangements and our Mr. Clark, on Monday last that negotiations to determine the relations between the Exchange and the Company shall be taken up as speedily as possible.

Yours truly,

(Signed) THOS. T. ECKERT, *President.*

George W. Ely, Esq., Secretary, New York Stock Exchange.

EXHIBIT A8.

(A True Copy.)

June 30, 1897.

Thomas T. Eckert, Esq., President, Western Union Telegraph Company.

DEAR SIR: In your acceptance to-day of the proposed arrangement for ticker service contained in my letter to you of 29th inst., you state, "the present conditions of the service to be undisturbed pending such negotiations." As this is contrary to the terms of the agreement, viz.: "but that the New York Stock Exchange or its Committee of Arrangements may at any time and without notice wholly discontinue and terminate said contract," etc., we beg that you will withdraw said statement from your letter.

Yours, &c.,

(Signed) GEORGE W. ELY, *Secty.*

32

EXHIBIT A9.

(A True Copy.)

[*Letterhead of the Western Union Telegraph Company.*]

New York,

June 30th, 1897.

George W. Ely, Esq., Secretary, New York Stock Exchange, N. Y.

DEAR SIR: In compliance with your request of this date. I send you an amended acceptance of the proposition of the Stock Exchange for a day-to-day arrangement with the Western Union Telegraph

Company, the last phrase of my letter of this morning ("—the present conditions of the service to be undisturbed pending such negotiations.") being omitted therefrom.

This phrase was put into my first letter in order that the understanding between your Committee of Arrangements and Mr. Clark should be recorded. That understanding was that the service as now performed by us is to be undisturbed during the temporary arrangement to which we agree, but that applications for new service are to be submitted to the Exchange for approval or disapproval as provided in the contract. It is obvious that any differences concerning the present service must form part of the subject of negotiations for a new contract when those negotiations are taken up, and it is only fair to all interests that there should be no misunderstanding as to the continuance by the company of the service now rendered by it which it has been agreed is to be undisturbed under this temporary arrangement.

I am,

Yours very truly,

(Signed) THOS. T. ECKERT, *President.*

33 & 34 EXHIBIT A10.

(A True Copy.)

[*Letterhead of the Western Union Telegraph Company.*]

New York,

June 30th, 1897.

DEAR SIR: We are in receipt of your letter of the 29th instant, notifying the Western Union Telegraph Company that the New York Stock Exchange will continue the operation of the contract of November 19th, 1892, between it and the company from day to day after June 30th, 1897, the Company to pay to the Exchange therefor the sum of $90 at the close of business on each day, and the Exchange or its Committee of Arrangements to have the right to discontinue and terminate the said contract at any time without notice.

The Western Union Telegraph Company agrees to this proposal, reserving to itself, however, the same right of peremptory discontinuance that the Exchange reserves to itself, and subject to the provision, as understood between your Committee of Arrangements and our Mr. Clark, on Monday last, that negotiations to determine the relations between the Exchange and the Company shall be taken up as speedily as possible, the present conditions of the service to be undisturbed pending such negotiations.

Yours truly,

(Signed) THOS. T. ECKERT, *President.*

Geo. W. Ely, Esq., Secretary, New York Stock Exchange.

35 EXHIBIT A11.

This Agreement, made and entered into this first day of August, Nineteen hundred, by and between The Western Union Telegraph Company, acting for itself and as lessee of the Gold and Stock Telegraph Company hereinafter designated as the "Telegraph Company," party of the first part, and the New York Stock Exchange, hereinafter designated as the "Stock Exchange," party of the second part.

Whereas the Stock Exchange desires to provide for the prompt transmission of the quotations of prices and reports, of transactions occurring upon the New York Stock Exchange, and the Telegraph Company is willing to undertake the same,

Now, therefore, this Agreement witnesseth

That in consideration of the premises and of the mutual covenants and conditions herein contained, the parties hereto have agreed and by these presents do mutually agree to and with each other as follows:

First. The Stock Exchange agrees at its own cost and expense to collect, furnish and transmit to the Telegraph Company, in the manner hereinafter provided, for distribution by the Telegraph Company, as hereinafter provided, full and continuous reports of the current transactions, news, quotations and statistics made or originating in the Stock Exchange, of such stocks, bonds or other securities or properties as are or may be dealt in by the members thereof during the hours for trading prescribed by its rules, and also the changes which may occur in the same from time to time.

Said reports shall embrace such quotations and other information as have heretofore been usually delivered by said Exchange
36 to the Telegraph Company, and while the Stock Exchange does not guarantee that the same shall be absolutely accurate, or shall embrace all the transactions occurring or originating in said Exchange, it will, nevertheless, use reasonable diligence to make the same as full, complete and accurate as may be practicable.

The Telegraph Company shall run and maintain a cable containing wires from its transmitting room to such place in the building occupied by said Exchange as may from time to time be determined by the Committee of Arrangements of the Stock Exchange, and shall furnish in the same place a keyboard connected with said cable by means of which the transmitter located in the building of the Telegraph Company shall be operated.

The Stock Exchange shall furnish booths and instruments on the floor of the Exchange, and wires running from said instruments to a receiving instrument located at said place so to be determined.

The Stock Exchange shall, by its own operators, transmit said reports hereinbefore provided for from said booths on the floor of the Exchange directly and promptly over its wires to said receiving instrument. The Telegraph Company shall, by its operators, take

off said reports from said receiving instrument and then convey the same to its said transmitter by means of the keyboard and cable aforesaid.

The wires of the Telegraph Company connecting with those of the Exchange shall not be connected with any other wires by repeater or any other device.

The Telegraph Company further agrees that the wires over which said reports are transmitted to its said main office shall be so arranged and protected as to render the same, as far as possible, incapable of being tapped, and that the Telegraph Company will use its utmost endeavors to prevent said reports, or any part thereof, being taken off said wires, or in any way diverted or dis-
37 tributed prior to their reaching said transmitter. So long as the New York Quotation Company shall be employed by the Stock Exchange for the transmission of said reports to any person or persons, the transmission of such reports to the Telegraph Company shall be simultaneous with, and shall be performed in like and equal manner and time with their transmission to the New York Quotation Company, and no preference shall be given either Company in such service.

Second. The Telegraph Company shall have the right to transmit said reports to members of the New York Stock Exchange at their offices north of Chambers Street in New York City, and shall also have the right to serve said reports to each Director of the Telegraph Company who is a member of the Stock Exchange on one ticker in the office of any such director located south of Chambers Street, but said Telegraph Company shall not serve said reports to any members of the Stock Exchange except as herein provided.

The Telegraph Company shall charge members of the Stock Exchange for the use of tickers delivering such reports in their offices north of Chambers Street, and south of Sixtieth Street in New York City, not exceeding Twenty-five (25) Dollars per month for each ticker.

The Telegraph Company shall also have the right to serve said reports to all persons, firms, corporations and organizations in New York City and elsewhere whenever the Telegraph Company may desire to serve them, excepting to organizations or Exchanges in the City of New York competing with the New York Stock Exchange, and except to members of the Stock Exchange south of Chambers Street in New York City, and except to persons who may be directly or indirectly engaged in the promotion or maintenance of bucket-shops; provided, however, that the Telegraph Company will not contract to furnish tickers, and will not furnish tickers to any person, firm, corporation or organization in New York City not
38 already having its instruments, until the application of such person, firm, corporation or organization shall have been submitted to and approved by at least three members of the Committee of Arrangements of the Stock Exchange, and as their existing contracts expire from time to time, it will not make renewals thereof, or continue to furnish service to such parties in New York City until their respective applications for such renewals have been in like

manner submitted and approved; but these provisions shall be construed liberally to the Telegraph Company to the end that its service of and revenues from such reports shall not be unreasonably restricted, and that its patrons shall not be embarrassed. Such applications shall be acted upon promptly by said Committee of Arrangements.

The Telegraph Company shall not be required to remove any of its tickers which are under restraint by injunction of the courts during the pendency of such injunction, but diligent efforts shall be made by the Telegraph Company to secure the removal of such injunctions at its own cost and expense in cases where the Stock Exchange may so desire or request. In the event that the Stock Exchange shall be dissatisfied with the conduct of the defense by the Telegraph Company in any such suit or action, the Stock Exchange shall, upon demand, have the right to conduct such defense by counsel of its own selection, in the name and at the expense of the Telegraph Company.

Third. Except for the purpose of distribution to members of the Stock Exchange south of Chambers Street in New York City by the New York Quotation Company, or by such other instrumentality as the Stock Exchange shall from time to time select, and for the distribution in the City of Boston by the United Telegram Company, the Stock Exchange agrees that during the term of this contract it will not grant the privilege of receiving and transmitting, or
39 using, nor will it furnish to any person, party, firm or corporation other than the Telegraph Company any quotations, reports, news or statistics of transactions, trades or dealings on said Exchange, nor will the Stock Exchange (so far as it can lawfully prevent the same) permit, suffer or allow any of its members to receive, use, transmit, distribute or deliver for sale or distribution any of said quotations, reports, news or statistics of transactions, trades or dealings on said Stock Exchange, nor will said Stock Excange do any act whereby any other person, firm or corporation than the Telegraph Company party hereto (except as above mentioned) shall acquire any right to receive, use, transmit, distribute or deliver for sale or distribution, any of the said quotations, reports, news or statistics of transactions, trades or dealings on said Stock Exchange; but nothing herein contained shall be construed to apply to the publication and distribution by other than electric devices of quotation sheets and price lists of transactions on said Exchange.

For the purpose of protecting the Telegraph Company against the use of any quotations, reports, news or statistics of the Stock Exchange by parties not entitled to them the Telegraph Company may prosecute by suit, injunction or other legal remedies proper and suitable for the prevention or stoppage of such competitive use, either in its own name or in the name of the Stock Exchange, or its proper officers, any party or parties obtaining or using said quotations, reports, news or statistics not entitled to them, whether obtained from the Stock Exchange or its members, or employees, or otherwise, and in case the Telegraph Company shall sue and proceed in the name of the Stock Exchange, the Stock Exchange shall, by its proper officers, do all such proper acts and things and sign all

such proper and necessary papers in order to enable the Telegraph Company to conduct proceedings with due diligence and effect. All such suits and other legal proceedings, whether carried on by
40 the Telegraph Company in its own name, or in the name of the Stock Exchange, shall be at the sole cost and expense of the Telegraph Company, and the Telegraph Company agrees to indemnify and save harmless the Stock Exchange of and from all damages, expenses, costs, charges and fees incurred in or arising out of any such suit or proceeding.

Fourth. As compensation for the privilege of receiving said quotations and reports for distribution as aforesaid, hereby granted by the Stock Exchange to the Telegraph Company, the Telegraph Company agrees to pay to the Stock Exchange the sum of Twenty-seven thousand Dollars ($27,000) per annum, in equal installments of Two thousand two hundred and fifty dollars ($2,250) at the close of each month until the 30th day of April in the year 1902, and thereafter the sum of One hundred thousand dollars ($100,000) per annum in equal installments of Eight thousand three hundred and thirty-three and 33/100 dollars ($8,333.33) at the close of each month until the 30th day of April, 1917, and in case the Telegraph Company shall make default in the payment of any such installment for the period of five days after the same becomes due, the Stock Exchange may forthwith terminate such privilege without notice.

In case the Stock Exchange shall at any time during the continuance of this agreement refuse to all other parties the right to receive, use, transmit and deliver its quotations, news and statistics in the City of Boston, and shall grant such privilege in Boston exclusively to the Telegraph Company party hereto, then and from thenceforth for so long, during the continuance of this agreement, as said exclusive privilege for the said City of Boston is continued by said Stock Exchange to the Telegraph Company party hereto, the monthly payments herein provided to be made by the Telegraph Company to the Stock Exchange shall be increased by the sum of Two hundred and fifty Dollars ($250) per month, if the
41 same shall occur prior to April 30th, 1902, and by the sum of One thousand Dollars ($1,000) per month if the same shall occur thereafter.

Fifth. For the purposes of this agreement the term "member of the Stock Exchange" shall be construed to include any firm, one or more of whose members are members of the Stock Exchange.

Sixth. The Telegraph Company party hereto agrees for itself and the Gold and Stock Telegraph Company, on the one side, and the Stock Exchange agrees for the New York Quotation Company, on the other, that any improvements on the instrumentalities now in use by either of the said Companies which may be owned and introduced in the ticker service in New York City during the continuance of this contract by either of the said Companies, may be used by the other of said Companies in New York City during the continuance of this agreement. free of charge and in case any such improvement shall be introduced by either Company under a license or other arrangement

short of ownership of the patent covering the same, the Company availing itself of such license or other arrangement shall procure a similar license or other arrangement for the other Company, to continue during the existence of this contract, in which case each Company shall pay royalty under such license in the proportion that the number of its instruments using such improvement bears to the whole number of instruments of both parties on which such improvement is used, and in default thereof shall not be at liberty to use such improvement in its own service.

In case additional corporate action shall be required by any of the parties, such further action shall be obtained and such further agreement shall be executed as may be necessary for the carrying out of this provision according to its true intent, so that the actual
42 expense and royalty, under the license or other arrangement, incurred by the Company introducing the improvement shall be the measure of compensation to be paid by the other.

Seventh. The provisions of this agreement applicable to the New York Quotation Company shall apply from time to time to such other Company, if any, as shall be substituted by the Stock Exchange for the said Quotation Company for serving its quotations, news and statistics to the members of said Stock Exchange south of Chambers Street in New York City.

Eighth. It being the intention of this agreement that the reports and quotations to be furnished by the Stock Exchange to the Telegraph Company shall be substantially such as have been furnished in the past by the Stock Exchange to the Gold and Stock Telegraph Company and to the Telegraph Company party hereto, and the nature of the business rendering it impossible to insure absolute accuracy or completeness in said reports, it is expressly understood that while the Stock Exchange will use reasonable diligence in collecting and transmitting said reports as fully, completely and accurately as may be practicable, yet it shall not be liable to the Telegraph Company or any of its customers for any delays, inaccuracies, errors or omissions in said quotations or reports, or from any damage arising therefrom or occasioned thereby.

Ninth. The parties hereto agree that if at any time hereafter, and before the expiration of this contract, any dispute or difference shall arise between them concerning the true intent, meaning or construction of anything contained in this contract, or concerning any matter included within the spirit or scope thereof, or concerning the acts or omissions of the Stock Exchange or the Telegraph Com-
43 pany, then so often as a dispute or difference shall arise any and all such matters in difference shall be submitted and referred to the award and determination of three arbitrators to be chosen, one by the Stock Exchange, another by the Telegraph Company and the third by the two thus chosen, and the decision or award of any two of the arbitrators in writing shall be binding and final between the Stock Exchange and the Telegraph Company and shall be carried out and performed by the said Stock Exchange or the Telegraph Company, as the case may be.

Tenth. The provisions of this agreement shall take effect im-

mediately and shall be and continue in force until and including the 30th day of April, in the year 1907.

In Witness Whereof The Telegraph Company has caused these presents to be executed by its President and its corporate seal to be hereto affixed, and the Stock Exchange has caused the same to be executed by its President and Secretary, the day and year first above written.

THE WESTERN UNION TELEGRAPH COMPANY,
[SEAL.] By THOS. T. ECKERT, *President.*

J. C. WILLEVER,
Acting Secretary.

NEW YORK STOCK EXCHANGE,
By RUDOLPH KEPPLER, *President.*

WM. McCLURE, *Secretary.*

44 EXHIBIT A12.

Extracts from the Minutes of the Meeting of the Governing Committee, April 24, 1907.

"Whereas, the agreement between this Exchange and the Western Union Telegraph Company, acting for itself and as lessee of the Gold and Stock Telegraph Company for the transmission of quotations of prices, and reports of transactions occurring upon said Exchange, dated August 1, 1900, will terminate on April 30th inst., therefore

"Resolved, that the Committee of Arrangements be empowered to notify the said Western Union Telegraph Company that, on and after May 1st next, the present contract will be continued from day to day only, and will be terminable, at the option of either party, at the end of any day, with or without notice."

45 & 46 EXHIBIT A13.

(A True Copy.)

April 25, 1907.

Robert C. Clowry, Esq., President, Western Union Telegraph Company.

DEAR SIR: I am instructed by the Committee of Arrangements to forward to you a copy of preamble and resolution adopted by the Governing Committee of this Exchange on Wednesday, April 24th inst., and to request you to consider this the notification mentioned therein.

Said preamble and resolution are as follows:

Whereas, the agreement between this Exchange, and the Western Union Telegraph Company, acting for itself and as lessee of the Gold and Stock Telegraph Company for the transmission of quotations of prices and reports of transactions occurring upon said Exchange, dated August 1, 1900, will terminate on April 30th inst., therefore

Resolved, that the Committee of Arrangements be empowered to notify the said Western Union Telegraph Company that, on and after May 1st next, the present contract will be continued from day to day only, and will be terminable, at the option of either party, at the end of any day, with or without notice.

Respectfully,

(Signed) GEORGE W. ELY, *Secretary.*

47 & 48 EXHIBIT B.

Agreement Between New York Stock Exchange and The Western Union Telegraph Company.

49 This Agreement, made this first day of July, in the year One thousand nine hundred and fourteen, by and between The Western Union Telegraph Company, acting for itself and as the lessee of the Gold and Stock Telegraph Company, hereinafter designated as "The Telegraph Company," party of the first part, and the New York Stock Exchange, hereinafter designated as the "Exchange," party of the second part, witnesseth:

That in consideration of the premises and of the mutual covenants and conditions herein contained, the parties hereto have agreed, and by these presents do mutually agree, to and with each other as follows:

First. The Exchange agrees, at its own expense, to furnish to the Telegraph Company, under the limitations, conditions and restrictions hereinafter prescribed full and continuous quotations of prices made in transactions upon the Exchange. The quotations so furnished shall include substantially such quotations and other information as have heretofore been furnished by the Exchange to the Telegraph Company under the contract heretofore subsisting between them. The Exchange does not guarantee the accuracy or completeness of said quotations, but undertakes to use reasonable diligence to make the same accurate and complete as may be practicable; it being distinctly understood and agreed, however, that the Exchange shall not be liable to the Telegraph Company or to any of the persons to whom it may furnish the same, or to any other person whatsoever, for any inaccuracies, errors, or omissions in said quotations, or for any damages arising therefrom or occasioned thereby.

Second. The transmitter of the Telegraph Company operating its own or Gold and Stock tickers in the City of New York shall
50 be located in the room in the basement of the building occupied by the Exchange heretofore and now used by the Telegraph Company as its transmitting room.

The Telegraph Company shall run and maintain a cable containing wires from its said transmitting room to such place in said building as may be from time to time designated by the Exchange; and shall furnish in the same place a keyboard connected with said cable, by means of which the transmitter located in the said transmitting room shall be operated.

The Exchange shall maintain Morse telegraph instruments on the floor of the Exchange and a wire running from each of said instruments to a receiving Morse instrument at said keyboard; and shall by its own operators transmit said quotations directly and promptly over said wires to said receiving instrument, or such transmission may be by such other means as may be hereafter mutually agreed upon. The Telegraph Company shall by its own operators take off from the said receiving instrument the said quotations, and transmit the same to its said transmitter by means of the keyboard and cable aforesaid. The wires of the Telegraph Company connecting the said keyboard with said transmitter shall not be connected with any other wires by repeater or any other device.

The Telegraph Company shall so arrange and protect the wires over which said quotations are sent to said transmitter, and the wires over which the same are sent from said transmitter to its own or the Gold and Stock tickets connected therewith, that said wires so far as possible cannot be tapped, or said quotations taken off said wires, or in any way communicated otherwise than through said tickers. No tickers shall be connected with, or operated from, said transmitter except Western Union or Gold and Stock tickets located in the offices of persons to whom the Telegraph Company furnishes said quotations after full compliance with the limitations, conditions and provisions of this contract; and one ticker located in said
51 transmitting room of the Telegraph Company; and one or more tickets located in the relaying rooms of the Telegraph Company. The Telegraph Company may furnish said quotations, or any part thereof, or any information therein contained, to its patrons by means of tickets, or by telegraph or telephone wires and instruments, or may deliver them by messengers or otherwise as it may elect, subject to the limitations, conditions and provisions hereinafter contained. The Telegraph Company in relaying said quotations shall use its best efforts to prevent the tapping of any wire or wires over which the same are transmitted, and to prevent any person, other than those to whom it furnishes the same, after full compliance with the limitations, conditions and provisions hereof, from obtaining the same from it or from any of its employees.

The relaying rooms of the Telegraph Company in New York City shall be located at the offices of the Telegraph Company in the Walker Lispenard Building, 24 Walker Street, or at such other place or places as may be mutually agreed upon by the parties hereto. At any and all reasonable times properly accredited persons designated by the Exchange shall have access to said relaying rooms, and also all relaying rooms in other cities and test rooms through which wires used in transmitting said quotations pass, and the right to examine,

in the presence of the Telegraph Company's officials in charge thereof, all appliances, and observe all operations located or carried on therein. Otherwise no one shall be authorized to have access to the quotations in said relaying rooms during business hours, except the officers of the Telegraph Company and its employees engaged in relaying or handling said quotations. No quotations shall be relayed from the transmitting room of the Telegraph Company in the building occupied by the Exchange. At any and all reasonable times properly accredited persons designated by the Exchange shall have access to said transmitting room of the Telegraph Company,
52 and the right to examine, in the presence of the Company's officials in charge thereof, all appliances and to observe all operations therein.

Neither said quotations, nor any part thereof, nor any information therein contained, shall be furnished by the Telegraph Company or its employees to any person or in any manner except as herein provided.

None of said quotations shall be sent out by the Telegraph Company except those sent over ticker circuits connected with the transmitter located in the basement of the Stock Exchange, or by relaying from a ticker connected with said transmitter.

Third. So long as the New York Quotation Company shall furnish the quotations of the Exchange to any person or persons the furnishing of such quotations to the Telegraph Company shall be simultaneous with, and performed in like and equal manner, and time, as in the case of the New York Quotation Company; and no preference shall be given either Company with respect thereto. The provisions of this agreement applicable to the New York Quotation Company shall apply from time to time to such other Company, if any, as shall be substituted by the Exchange for the said Quotation Company for furnishing its quotations to members of said Exchange in that portion of the Borough of Manhattan south of Chambers Street.

Fourth. The Telegraph Company may furnish said quotations to any person whether a member of the Exchange or not anywhere in the United States or Canada outside of that portion of the Borough of Manhattan lying south of Chambers Street; and may also furnish the same by ticker to any person who is not a member of the Exchange, and to each director of the Telegraph Company who is also a member of the Exchange, at his or their office or offices in the Borough
53 of Manhattan south of Chambers Street; provided, however, that the Telegraph Company shall not after the first day of November, 1914, furnish quotations, by ticker or otherwise, in the volume of a continuous service, which is defined to be oftener than at intervals of fifteen (15) minutes (and is herein referred to as continuous quotations) to any subscriber therefor unless the subscriber shall have signed in duplicate an application therefor addressed to the Telegraph Company, and the subscriber shall have been approved by the Exchange, the said application to be substantially as follows:

29

"Application to The Western Union Telegraph Company for Continuous Quotations.

....., 19...

The Western Union Telegraph Company:

We hereby apply to you for a service of continuous quotations of the New York Stock Exchange, furnished you under contract between you and said Exchange, said quotations to be furnished to us at —— by —— ——; and we represent and agree with you as follows:

(1) That our business is and shall be the business of —— and that said business is conducted under the firm name and style of —— —— and that notice of any change of the name, nature or place of said firm or business shall at once be given to the said Western Union Telegraph Company; and that we are not keeping or causing to be kept, and will not keep or cause to be kept, or be in any wise interested in, or in any way assist or promote, any bucket-shop or bucket-shop business, or any office, store or other place wherein is conducted or permitted the business of making, or offering to make, contracts, agreements, trades or transactions, either orally or in writing, respecting the purchase or sale (or the purchase and sale) of any stocks, bonds or other securities or commodities wherein both parties, or the party maintaining such office or place or conducting such business, or the undersigned, contemplate or intend that
54 such contracts, agreements, trades or transactions shall, or may be, closed, adjusted or settled according, or with reference, to the quotations of any Exchange, Board of Trade, or market place, upon which stocks, bonds or other securities or commodities are dealt in; or otherwise than by an actual bona fide transaction or purchase or sale; or wherein both parties or the party maintaining such office or place or conducting such business or the undersigned contemplate or intend that such contracts, agreements, trades or transactions shall, or may, be closed or terminated when the quotations of some such Exchange, Board of Trade or market place respecting the stocks, bonds or other securities or commodities specified in such contracts, agreements, trades or transactions shall reach a certain figuure; and we agree that we will not use, or allow anyone else to use such quotations or any of them for any such purpose or in any such bucketshop, office or place.

(2) That said quotations are to be received by us only for our private and individual use in our said business at the office or place above designated; and that we will not communicate or otherwise furnish or permit to be communicated or otherwise furnished said quotations to any news distributing company or telegraph company, or any person or corporation, nor to any other place than that above designated, nor allow any person or corporation whatsoever to take directly or indirectly said quotations from said office. But nothing herein contained shall preclude us from furnishing said quotations to any branch office of ours, nor to any of our correspondents, provided

that said branch office or offices shall first be approved by the New York Stock Exchange, and further provided that before furnishing said quotations to any such correspondent such correspondent shall be approved by the New York Stock Exchange, and we shall first obtain in duplicate (one of which shall be delivered to you and one to the New York Stock Exchange) an agreement signed by such correspondent in which said correspondent shall agree with the Western Union Telegraph Company to abide by and comply with clauses 1, 2, 3, 4 and 7 hereof. If the undersigned shall furnish, or permit to be furnished, said quotations, or any of them, to any person, firm or corporation, excepting after compliance with the provisions hereinbefore contained, the undersigned hereby agrees that the Western Union Telegraph Company may sue the person, firm or corporation to whom said quotations or any of them are thus furnished to prevent the receipt or use thereof by said person, firm or corporation without making the undersigned a defendant thereto, provided the undersigned does not, or in cases of a partnership all the members thereof do not, reside within the jurisdiction of the Court in which said suit is brought.

55

(3) That the office or place above designated shall not be connected by any private telegraph or telephone wire, or other wire connection, or other means of communication, with the office or place of business of any person or persons, or corporation, engaged in the business of making contracts, agreements, trades or transactions respecting the purchase and sale of stocks, bonds or other securities or commodities, or with any place where such business is conducted, unless the New York Stock Exchange shall have been notified of such connection and shall not have disapproved the same; nor with any branch office or correspondent excepting such branch offices and correspondents as have been approved by the New York Stock Exchange as provided in Clause 2 hereof. But nothing in this clause contained shall be construed as applying to the private wire connections of members of the New York Stock Exchange which have been approved in conformity with its rules.

(4) That at any and all times any person or persons designated by the said Telegraph Company or the said New York Stock Exchange shall have access to the office or place above designated, and the right to observe the use made of said quotations, and to examine and inspect all instruments and apparatus used in connection with the said service in said office or place.

(5) That the Western Union Telegraph Company may, with or without notice, forthwith discontinue said service whenever in its judgment there shall have been any breach of the foregoing agreements or any of them by the undersigned, or whenever directed so to do by said New York Stock Exchange.

(6) That the Western Union Telegraph Company shall not be pecuniarily liable for the accuracy of the quotations which it may furnish under this application, nor for any delays, inaccuracies, errors or omissions in said quotations, or for any damages arising therefrom or occasioned thereby.

(7) That quotations upon any stock, bond or other security at

intervals of fifteen (15) minutes or less shall be deemed to be
56 continuous quotations within the meaning of this application.

.....,
.....,

Accepted:

THE WESTERN UNION TELEGRAPH COMPANY,

By .....

Applicant approved:

NEW YORK STOCK EXCHANGE,

By ....."

One of said applications when signed shall be delivered to the Exchange; but said application and the acceptance thereof by the Telegraph Company shall not be effectual for any purpose until the subscriber is approved by the Exchange. Notice shall be promptly given by the Exchange of its approval or disapproval of the applicant.

It is understood and agreed, however, that the Telegraph Company may furnish any quotations furnished to it hereunder to its patrons at intervals of more than fifteen (15) minutes without requiring such patrons to sign said application form; but the Telegraph Company shall furnish to the Exchange a list of such patrons monthly, and shall discontinue such service to any thereof to whom the Exchange may object.

Fifth. The Telegraph Company shall as soon as practicable furnish to the Exchange a list of all persons to whom it is now furnishing continuous quotations of the Exchange under subsisting contracts, with the full names, addresses and business occupations of said persons; and shall at reasonable intervals of time, when requested so to do by the Exchange, furnish the Exchange with a complete list of persons to whom it is then furnishing said continuous quotations, together with similar information in respect to them.

57 Sixth. The Telegraph Company agrees that it will use its best efforts to prevent any persons, other than those approved by the Exchange as hereinbefore provided from obtaining said quotations; and that in case said quotations are obtained by persons not so approved it will use its best endeavors to ascertain the source from which the same are obtained, and to inform the Exchange fully in respect thereto. The Telegraph Company further agrees that in case any person shall fail to comply with any of the conditions, restrictions and limitations contained in the application signed by him as hereinbefore provided, it will at its own risk, cost and expense terminate the contract between him and it and the furnishing of said quotations to him thereunder.

In case any suit or legal proceeding is brought to enjoin the Telegraph Company from refusing to furnish quotations to any person, the Telegraph Company shall at once inform the Exchange of such suit or proceeding, and shall permit the Exchange to intervene therein, or to defend the same in the name of the Telegraph Com-

pany; but, in such cases, the Exchange shall indemnify the Telegraph Company against and save it harmless from any and all costs and damages awarded against it.

In case the Exchange institutes any suit or proceeding to enjoin any person not entitled to said quotations from obtaining or using the same, the Telegraph Company will co-operate with and assist the Exchange in its prosecution; and whenever requested so to do by the Exchange, and indemnified against any cost or liability which it may thereby incur, it will institute in its name, or permit the Exchange to institute in the name of the Telegraph Company, any action or proceeding to prevent any person not entitled to said quotations from obtaining or using the same. The Telegraph Company shall, unless enjoined by any Court from doing so, discon-
58 tinue furnishing said quotations to any person whether a member or non-member of the Exchange whenever notified by the Exchange of its disapproval of such person, but in all cases of discontinuance, pursuant to notice given by the Exchange, the Exchange shall indemnify and save harmless the Telegraph Company from all costs, damages or liability which it may incur by reason of such discontinuance.

Seventh. The charge made by the Telegraph Company to members of the Exchange for furnishing the continuous quotations aforesaid to the offices of such members in the Borough of Manhattan north of Chambers Street and south of Sixtieth Street, by means of tickers located in such offices, shall not exceed twenty-five Dollars ($25) a month for each ticker. The charge made by the Telegraph Company for furnishing said quotations to members of the Exchange wherever located shall not in any case exceed the charge for such service made to any non-member similarly located.

Eighth. The Telegraph Company agrees to pay to the Exchange at the rate of fifty thousand dollars ($50,000) per annum during the continuance of this agreement, in equal monthly installments of four thousand one hundred sixty-six and 67/100 Dollars ($4,166.67) on the last day of each month.

Ninth. The parties hereto agree that if at any time hereafter any difference or dispute shall arise between them concerning the true intent, meaning or construction of anything contained in this contract, or concerning any matter included within the spirit or scope thereof, or concerning the acts or omissions of the Exchange or the Telegraph Company in connection with the performance thereof, then, so often as a dispute or difference shall arise, any and all such matters in difference shall be submitted and referred to the
59 award and determination of three arbitrators to be chosen one by the Exchange, another by the Telegraph Company, and a third by the two thus chosen; and the decision or award of any two of the arbitrators in writing shall be binding upon, and final between, the Exchange and the Telegraph Company, and shall be carried out and performed by the said Exchange or Telegraph Company, as the case may be.

Tenth. Nothing herein contained shall be construed to entitle the

Telegraph Company to furnish said quotations to Members of the Exchange in the Borough of Manhattan south of Chambers Street, excepting directors of the Telegraph Company who are members thereof. The Exchange reserves the right to contract with any other Telegraph Company to furnish said quotations to it; but in case it shall enter into any such contract or contracts the quotations furnished thereunder shall be identical with the quotations furnished to the Telegraph Company pursuant to the provisions hereof, and shall be furnished to the Telegraph Company simultaneously with the furnishing thereof to such other company or companies, and shall be furnished to such other company or companies, subject to limitations, conditions and restrictions substantially identical with those prescribed by this agreement.

In the event that the price charged any such other Company by the Exchange for furnishing it with said quotations shall bear a less proportion to the gross revenue obtained by such other Company from its subscribers for furnishing them said quotations than the price herein stipulated to be paid by the Telegraph Company bears to the gross revenue obtained by it from its subscribers, the price to be paid by the Telegraph Company shall be reduced so that the proportion in its case shall not exceed the proportion in the case of the other Company. This provision shall not be construed to refer to the service of the New York Quotation Company to members of the Exchange south of Chambers Street in the Borough of Manhattan.

Eleventh. It is understood and agreed that as to the right of the Exchange, hereinbefore specified, to disapprove applicants for quotations and to require the discontinuance of the furnishing of such quotations on notice given by it, it is the intent only to prevent the unlawful or improper use of such quotations.

Twelfth. This agreement shall take effect on the first day of July, 1914, and shall continue in force until and including the 30th day of June, 1915; and shall continue in force thereafter until the expiration of thirty days after written notice shall have been given by either party to the other terminating the same.

Thirteenth. Whenever the word "person" or "persons" or "non-member" or "non-members" is used herein it shall be deemed to include firms, corporations and associations as well as natural persons. The term "member of the Exchange" shall be construed to include any firm one or more of whose members are members of the Exchange.

Wherever, by the terms hereof, any action, approval or disapproval of the Exchange is authorized or required, the written statement of the Secretary or the Assistant Secretary of the Exchange with respect thereto, shall be sufficient evidence thereof.

In witness whereof, the Telegraph Company has caused these presents to be executed by its Vice-President, and its corporate seal to be hereto affixed, and the Stock Exchange has caused the

61 & 62 same to be executed by its President, and Secretary, the day and year first above written.

THE WESTERN UNION TELEGRAPH COMPANY,

(Signed) By G. W. E. ATKINS, *Vice-President.*

Attest:

(Signed) WM. H. BAKER, *Secretary.*

NEW YORK STOCK EXCHANGE,

(Signed) By H. G. S. NOBLE, *President.*

Attest:

(Signed) GEORGE W. ELY, *Secretary.*

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EXHIBIT C.

C. H. Foster,

Member of Consolidated Stock Exchange of N. Y.,

Stock Broker,

60 Devonshire Street.

246 Washington Street,

Boston, Mass.,

March 3, 1915.

Public Service Commission, 1 Beacon Street, Boston, Mass.

DEAR SIRS: I desire to notify you that I have been unable to obtain from either the United Telegram Company or the Gold and Stock Telegraph Company a ticker furnishing the quotations made on the New York Stock Exchange. Both of these companies are organized under the Laws of Massachusetts, and are doing business in this State.

I have been engaged continuously in the stock brokerage business in the City of Boston for something like 25 years. During all that period until the latter part of December, 1914, I have had tickers giving quotations on both the New York Stock Exchange and the Boston Stock Exchange. In December, 1914, the tickers which furnish the New York quotations which I have had in my office, 246 Washington Street, Boston, were removed and I have been unable to secure them since that time. I have made proper application to both companies and offered to pay the charge for the service.

It seems that since December these ticker companies will not furnish the tickers without the applications are approved by the Committee on Quotations of the New York Stock Exchange. I have appeared before that Committee in New York two separate times, and

have given them a full statement of my business, and answered every question which they cared to ask. So far as I know they have not yet taken any action on my application. I understand that your commission have control of this service, and I wish to make an application to this commission to have this service furnished as quickly as possible. I understand everybody wishing a ticker in the City of Boston has had their application granted excepting my application.

I have been an approved correspondent of a member of the New York Consolidated Stock Exchange since the year 1907, and within the past few months have become a member of that Exchange. Since 1907 I have done my business through a member of that Exchange who has been in good standing there. In conducting my business I have always complied with the Laws of Massachusetts in every way. I will be glad to give your commission any further information on this subject that is desired.

Yours very truly,

CALVIN H. FOSTER.

64 EXHIBIT D.

Public Service Commission of Massachusetts.

In the Matter of the Complaint of Calvin H. Foster

against

The United Telegram Company and the Gold & Stock Telegraph Company.

To The Honorable Members of the Public Service Commission of the State of Massachusetts:

The Western Union Telegraph Company has received a copy of the complaint of Mr. Calvin H. Foster, embodied in his letter to your Honorable Commission, dated March 3, 1915, making certain statements concerning the United Telegram Company and the Gold & Stock Telegraph Company, alleged to be companied engaged in furnishing quotations of the New York Stock Exchange for distribution in the City of Boston.

The Western Union Telegraph Company, as lessee of the Gold & Stock Telegraph Company, desires to communicate to your Commission the facts respecting the matter so far as concerns the Gold & Stock Telegraph Company, and states that it has no connection whatever with the United Telegram Company.

The Western Union Telegraph Company, in answer to said complaint, begs to state that it is advised that the whole matter is within the sole jurisdiction of the Interstate Commerce Commission, and therefore not a subject matter of which your Honorable Commission can take cognizance.

It further states that said Gold & Stock Telegraph Company referred to in said complaint is not a corporation of the State of Massachusetts, but is a corporation of the State of New York, organized in the year 1867 under the laws of New York.

In order that the matter may be presented in all its aspects, however, and in order that your Honorable Commission may be fully advised of all the facts which may arise in connection with said complaint, said Western Union Telegraph Company begs to state that said Gold & Stock Telegraph Company was organized as aforesaid under the telegraph laws of the State of New York for the purpose of transmitting to subscribers within the State of New York and elsewhere, quotations of dealings upon the New York Stock Exchange and other Exchanges then existing in the City of New York for the sale of produce, cotton and other commodities.

These Exchanges then were, and some continue to be, unincorporated associations of individuals. The New York Stock Exchange has continued to be an unincorporated voluntary association having control of the building in which it is located and upon the floor of which, under the rules established by it the eleven hundred members deal with each other in selling and buying securities, either on behalf of the members or on behalf of individuals employing them to act as brokers in buying and selling stocks and bonds dealt in upon said Exchange.

At the time of the organization of said Gold & Stock Telegraph Company for the transmission and delivery of quotations, its employes went upon the floor of said New York Stock Exchange and collected and collated the quotations of sales there made, and these quotations were transmitted by wire to subscribers. Ticker instruments were early used as an instrumentality for the delivery of such quotations, being located in the offices of subscribers for that purpose.

On or about the 1st day of January, 1882, all the property and business of said Gold & Stock Telegraph Company was leased to said Western Union Telegraph Company, for a period of ninety-nine (99) years, and since that time employees of the Western Union Telegraph Company have been engaged in performing the service theretofore rendered by employees of the Gold & Stock Telegraph Company, and continued to do so until on or about the 19th day of November, 1892, when said New York Stock Exchange, availing itself of a right belonging to it, excluded said Western Union Telegraph Company and its employees from the floor of said
65 Exchange, and itself, through its own employees, insisted upon the right of collecting and collating the quotations of securities dealt in upon the floor of said Exchange, and transferred to said Western Union Telegraph Company the quotations so collected and collated, which thereupon were transmitted by said Western Union Telegraph Company to persons employing it to furnish them with said quotations of stocks and bonds dealt in upon said New York Stock Exchange.

That on said 19th day of November, 1892, said New York Stock Exchange, acting through its duly appointed officers with the duly appointed officers of said Western Union Telegraph Company, entered into a contract for the purpose of carrying out the above mentioned policy of said Exchange, a copy of which contract is attached hereto and made a part of this answer, marked Exhibit A, which contract controlled the action of the parties thereto up to and in-

cluding June 30, 1897, when said contract expires, due notice of its termination having been given by said New York Stock Exchange, as shown by the correspondence between the officers of the parties thereto, a copy of which correspondence between the officers is printed as a part of and included within said Exhibit A.

That during the operation of said contract said New York Stock Exchange insisted upon (and the same was acceded to it by said Western Union Telegraph Company) its right to determine in each instance, the person who should be entitled to receive the quotations of stocks, bonds and other securities dealt in upon said Exchange, through and by means of ticker instruments, to be furnished by respondent, the Western Union Telegraph Company.

That from the 30th day of June, 1897, the date of the termination of said contract, a provisional arrangement existed for the continuation of the services under that form of contract, from day to day, until on or about the 1st day of August, 1900, when a new contract was entered into, a copy of which is hereby attached and made a part of this answer, marked Exhibit B, under which said Western Union Telegraph Company transmitted said quotations to such persons as were approved by the officials of said Exchange in accordance with the provisions of said contract, and not otherwise.

That at the time of the closing of the Stock Exchange the officers of said Exchange and the Western Union Telegraph Company were engaged in the consideration of the terms of a new contract, which new contract was executed on or about the 9th day of September, 1914, and dated from the 1st day of July, 1914. A copy of this contract is attached hereto and made a part of this answer, marked Exhibit C.

That heretofore, on the 22nd day of October, 1914, in accordance with the terms of said contract of July 1st, 1914, between said Exchange and respondent, the Western Union Telegraph Company, it transmitted to the officers of said Exchange the application of complainant herein for said continuous quotations, for approval by said Exchange, without which, under the terms of said contract of July 1st, 1914, it is not at liberty to furnish said quotations to complainant.

That said New York Stock Exchange has not approved the application of complainant so submitted to it, and has advised this respondent that it has declined to approve the application of said complainant.

That respondent, the Western Union Telegraph Company, by reason of the fact that it has not such control over said quotations as to enable it to transmit the same to complainant without the approval of said Exchange, and in obedience to the dictates of good faith in performing the obligations of said contract, and for no other reason whatsoever, determined not to continue said ticker service to complainant herein.

And respondent says that should your Honorable Commission make an order requiring it to furnish said quotation service to complainant under the circumstances and conditons above set forth, the respondent, the Western Union Telegraph Company, would be

66 required, in order to comply with such an order, to appropriate the property of said New York Stock Exchange for the benefit of complainant, and would result in the destruction of its contract with said New York Stock Exchange, contrary to the provisions of the Federal Constitution in that respondent would thereby be deprived of its property without due process of law.

That Western Union Telegraph Company has no information as to the statements contained in complainant's letter of March 3d, 1915, as to his business relations in Boston, and must therefore leave complainant to such proof thereof as the Commission may require.

Wherefore, said complaint should be dismissed,

First. For the reason that your Honorable Commission is without jurisdiction over the matters stated in said complaint, the same being within the sole jurisdiction of the Interstate Commerce Commission under the Acts of Congress of the United States.

Second. For the reason that upon the facts above stated said Western Union Telegraph Company has no legal right to render the service demanded by complainant in view of its contract with said New York Stock Exchange hereinbefore set forth.

Respectfully submitted,

THE WESTERN UNION TELEGRAPH COMPANY,

By RUSH TAGGART, *General Counsel.*

New York, April 15th, 1915.

On the twenty fifth day of July, A. D. 1916, the following Answer of the Western Union Telegraph Company was filed:

67 *Answer of the Western Union Telegraph Company, One of the Defendants.*

(Filed July 25, 1916.)

And now comes the Western Union Telegraph Company and for answer admits the allegation in paragraph 1 of said Bill of Complaint.

2. And said defendant, the Western Union Telegraph Company, admits the allegations in paragraph 2 of said Bill of Complaint.

3. And said defendant, the Western Union Telegraph Company, admits the allegations in paragraph 3 of said Bill of Complaint.

4. And said defendant, the Western Union Telegraph Company, admits the allegations in paragraph 4 of said Bill of Complaint.

5. And said defendant, the Western Union Telegraph Company, admits the allegations in paragraph 5 of said Bill of Complaint.

68 6. And said defendant, the Western Union Telegraph Company, admits the allegations in paragraph 6 of said Bill of Complaint.

7. And said defendant, the Western Union Telegraph Company, admits the allegations in paragraph 7 of said Bill of Complaint.

8. And said defendant, the Western Union Telegraph Company, admits the allegations in paragraph 8 of said Bill of Complaint.

9. And said defendant, the Western Union Telegraph Company, admits the allegations in paragraph 9 of said Bill of Complaint.

10. And said defendant, the Western Union Telegraph Company, admits the allegations in paragraph 10 of said Bill of Complaint.

11. And said defendant, the Western Union Telegraph Company, admits that it intends to and will comply with said Order of said Public Service Commission if and when said confirming order of said Court, as set forth in said paragraph 11, becomes operative, and will, in obedience to said Order, furnish to said Foster said continuous quotations, unless the operation of said confirming order is superseded and stayed by some order of said Court.

12. And said defendant, the Western Union Telegraph Company, admits the allegations in paragraph 12 of said Bill of Complaint.

13. And said defendant, the Western Union Telegraph Company, admits the allegations in paragraph 13 of said Bill of Complaint.

WESTERN UNION TELEGRAPH COMPANY,
By Its Attorney, ARTHUR LORD.

On the twenty seventh day of July, A. D. 1916, the following Answer of the Defendant, Calvin H. Foster, was filed:

69 *Answer of the Defendant Calvin H. Foster.*

(Filed July 27, 1916.)

Now comes the defendant, Calvin H. Foster, and in accordance with the rules of the Court governing defences in equity makes the following objections and answer to the plaintiff's Bill of Complaint:

(1) This defendant says that the Public Service Commission of the Commonwealth of Massachusetts as appears from the Bill of Complaint and the exhibits thereto annexed, was a party to the two proceedings instituted in the Supreme Court of the Commonwealth of Massachusetts which were brought to determine the validity of and to compel the enforcement of the said order of the said Public Service Commission, which it is the alleged purpose and object of this Bill to prevent the Telegraph Company from complying with; that if such be the case this Honorable Court ought not and should not interfere with the enforcement of said order of the said Public Service Commission in the absence of said Commission as parties defendant to this Bill.

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(2) That it appears from the allegations of the Bill of Complaint and the exhibits attached thereto that by suing out a writ of error and obtaining a supersedeas staying the enforcement of the decree of the Supreme Judicial Court of the Commonwealth of Massachusetts on appeal to the Supreme Court of the United States that the plaintiff could obtain all the relief asked for by this Bill; that it appears by the allegations of the Bill and the exhibits attached thereto that the plaintiff has an absolute right to sue out such writ of error

and to make application for such supersedeas; that the bill therefore shows upon its face that the defendant has a plain, complete and adequate remedy to protect its rights by availing itself of the above remedy and the Bill should therefore be dismissed in the absence of allegations showing that such remedy is not an available or adequate remedy for the plaintiff to now pursue in order to fully protect its rights.

(3) Under the allegations of the Bill and the exhibits attached thereto it conclusively appears that the plaintiff had an absolute right under the contract between it and the defendant Telegraph Company to intervene in the suit which was instituted by the de-
fendant, Foster, before the Public Service Commission of
71 Massachusetts; and that the defendant had an absolute right under said contract to take the defence of said suit out of the hands or control of the said defendant Telegraph Company; that it appears by the allegations of the Bill and the exhibits attached thereto that the defendant Telegraph Company was bound to notify the plaintiff of the institution of said suit as the said defendant Telegraph Company was under the contract acting as the special agent and representative of the plaintiff for that special purpose in Massachusetts; that in the absence of an allegation to the contrary it will be presumed that the defendant Telegraph Company in making defence to said suit did perform its obligations under the contract by giving to the plaintiff notice of said suit in accordance with the terms of said contract, in order that the plaintiff might appear and defend the said suit by itself and its own attorneys if it so choose to do, or to authorize the defendant Telegraph Company to make the defence in its place as specifically provided for in said contract; if after receiving such notice the plaintiff did not appear and defend its rights when it had an opportunity having the right to do so as fully as the defendant Telegraph Company had, then it is guilty of laches, and the Bill cannot be maintained, and must be dismissed on that ground as there is no allegation in the Bill that the plaintiff was not so notified and notice by the Telegraph Company will be presumed to have been given in accordance with the contract.

(4) The Bill alleges that the defendant Telegraph Company is about to violate its contract with the Exchange by furnish-
72 ing the defendant Foster with the continuous quotations of the Exchange in obedience to the order of the Public Service Commission as confirmed by the decree of the Supreme Judicial Court; but it appears from the order itself and the decree of the Supreme Judicial Court that neither the said order nor said decree by its terms nor in substance compels the Telegraph Company to furnish the defendant, Foster, with said continuous quotations. The defendant Telegraph Company may fully comply with the specific and express terms of the order of the said Public Service Commission as confirmed by the said decree of the Supreme Judicial Court by refusing any longer to engage in the business of furnishing to its subscribers, continuous quotations of the Stock Exchange within the City of Boston, or elsewhere in this Commonwealth. It is further apparent from the specific provisions of the contract itself that so

far as any rights of the Exchange under the contract are concerned, that the Telegraph Company is under no obligation or duty to the Exchange to furnish or distribute its quotations to any person whatsoever after receiving them from the Exchange (its only duty in this respect being not to deliver them to persons procured by itself without first securing the approval of the Exchange). It thus becomes self-evident that no contract right of the plaintiff is invaded should the Telegraph Company obey the said order and decree by retiring from such business; and as the plaintiff's Bill can only be supported upon the theory that the order of the said Public Service Commission and the decree of the Supreme Judicial
73 Court if complied with by the Telegraph Company compels the Telegraph Company to violate its contract, then the Bill should be dismissed.

(5) By the allegations of the Bill it is alleged that the furnishing and distributing of the quotations of the plaintiff Stock Exchange by the defendant Telegraph Company to its subscribers in Boston is within the sole and exclusive jurisdiction of the Interstate Commerce Commission. If this assumption be true it can only be true upon the theory that the defendant Telegraph Company in distributing the quotations in Boston is acting as a common carrier of messages in Interstate traffic for hire which said quotations as messages are sent by the plaintiff Stock Exchange as the sender to the various persons in Boston and in this Commonwealth receiving the same; if it be thus assumed therefore that the defendant Telegraph Company is acting in the capacity of a common carrier of messages which are sent by the plaintiff as the sender, then in such case the contract annexed to the Bill of Complaint is absolutely void and illegal as it conclusively appears from the said contract that the payment of $50,000 per year by the defendant Telegraph Company to the plaintiff Exchange would thereby constitute an illegal and unlawful payment, refund and rebate violating the provisions of Section 2, of the Act of February 4, 1887, Chapter 104, as amended by the Acts of June 18, 1910, Chapter 309. That the plaintiff can have no property rights in an illegal and void contract, and that this Honorable Court cannot enforce by its decrees the alleged contract rights of the plaintiff.

74 (6) It is provided by the ninth paragraph of the contract between the defendant Telegraph Company and the plaintiff Exchange that in case any difference or dispute shall arise between the parties concerning the true intent, meaning or construction of anything contained in the contract or concerning any matter included within the spirit or scope thereof, or concerning the acts or omission of the Exchange or the Telegraph Company in connection with the performance thereof, that all such matters and differences shall be submitted and referred to the award and determination of three arbitrators to be chosen one by the Exchange, another by the Telegraph Company and the third by the two so chosen; and it is provided by said agreement that the award of any two such arbitrators shall be binding, and shall be carried out by the parties to said contract.

By the above agreement the plaintiff Stock Exchange cannot maintain the present suit against the Defendant Telegraph Company without showing that it has offered to perform the said contract in accordance with the said agreement for arbitration; and in the absence of such allegations the Bill should be dismissed.

(7) That it appears from the allegations of the Bill and the contracts and other exhibits annexed thereto that the plaintiff claims the right to arbitrarily control the defendant Telegraph Company in the furnishing and delivering of the quotations which under the contract are the property of the said defendant Telegraph Company; that it appears by said contract that as a condition precedent to any person receiving the said quotations from said Tele-
75 graph Company that the said person must sign an application by the fifth clause of which the Telegraph Company is bound to forthwith discontinue the furnishing of said quotations whenever so directed to so do by the plaintiff Stock Exchange; that the said contract between the said Exchange and the said Telegraph Company is therefore void and illegal as unlawfully hampering and preventing the said Telegraph Company from performing its duties as a Public Service Corporation by thereby permitting an illegal and unlawful discrimination against persons wishing said service, and that this Honorable Court will not enforce the provisions of such a contract.

(8) And the defendant pleads in bar of the pending suit the following facts to wit: That members of the Committee on Quotations of the plaintiff Stock Exchange accompanied by its counsel were present and appeared before the Public Service Commission of the Commonwealth of Massachusetts at a preliminary hearing which was held to discuss the future proceedings; after service of the complaint had been made upon the defendant Telegraph Company and before the defendant Telegraph Company had filed its answer; that the members of the said Quotation Committee of the plaintiff Exchange with their counsel were there for the purpose of determining what arrangements were to be made in regard to the procedure and trial of the said complaint of said Foster; that the said plaintiff Stock Exchange had notice and knowledge of the proceedings instituted by the defendant, Foster, before
76 the Public Service Commission of Massachusetts, and had full opportunity and an absolute right under the contract relied on to intervene and defend the said suit and to take full control of the defence of said suit away from the defendant Telegraph Company and to carry the same along by itself and its own attorneys if it saw fit; that said defendant is now bound by the order of said Public Service Commission under the principles of the doctrine of Res Adjudicata; and that said order of the Public Service Commission as confirmed by the decree of the Supreme Judicial Court of the Commonwealth cannot be re-examined or collaterally attacked on the merits by the Plaintiff in any Court of the United States without violating the provisions of Article four, Section one of the Constitution of the United States, except only by a writ of error and appeal direct to the Supreme Court of the

United States. Wherefore from above facts your plaintiff says that the said order and decrees of the Judicial Tribunals of the Commonwealth of Massachusetts bar the plaintiff Exchange from maintaining this suit.

And this defendant further answering the plaintiff's Bill of Complaint on the merits says:

Paragraph 1. As to the allegations of paragraph 1 of the plaintiff's Bill this defendant admits all the allegations therein stated except that this defendant denies that the members of the New York Stock Exchange gather daily on the floor of the Exchange for the purpose of buying and selling to each other certain corporate stocks, bonds and other securities which have been approved for trading purposes by said Exchange. This defendant
77 charges that very little of the business of the said New York Stock Exchange constitutes a transaction between the members of said Exchange other than in their capacity as agents and brokers for other persons who are not members of said Exchange, and that only a small proportion of the dealings in said Exchange is between the brokers thereof acting as principals and not as agents.

Paragraph 2. As to the allegations in paragraph 2 of the plaintiff's Bill this defendant has no knowledge other than as stated by the Bill; that so far as the same are material the defendant calls upon the plaintiff to prove the same.

Paragraph 3. That as to the allegations in paragraph 3 this defendant says that the promptly acquired knowledge of the prices made from time to time on the floor of the New York Stock Exchange is of great value to the Public generally and to the principals for whom said Stock Exchange members are buying and selling said stocks from time to time; that the said Exchange is a Public market where for many years the public have resorted to purchase and sell securities of Public Service Corporations which are listed and traded in on said Exchange; as to the allegation in said paragraph concerning the amount of $42,000 alleged to be paid by said Exchange this defendant has no knowledge and leaves the plaintiff to prove the same; this defendant charges that the plaintiff Stock Exchange is in absolute control of the New York Quotation Company which delivers continuous quotations under a contract providing for a monopoly thereof in certain parts of New York which are identified and described in the contract
78 annexed to the plaintiff's Bill of Complaint; that the control by the defendant of the New York Quotation Company is absolute and complete and is a large source of income to the said Exchange. As to the other allegations in said paragraph 3 this defendant has no knowledge and leaves the plaintiff to prove the same so far as they are material.

Paragraph 4. This defendant says that as to the allegations in paragraph 4 of the Bill of Complaint relating to bucket-shops that this defendant is ignorant thereof, and leaves the plaintiff to prove the same so far as the same are material.

Paragraph 5. This defendant charges that the plaintiff Stock Exchange is more interested in procuring the revenue from the sale

of the quotations to the Telegraph Company than it is in stamping out bucket-shops; that the principal purpose and object which the plaintiff Stock Exchange had in mind in drawing the contract which it entered into with the Western Union Telegraph Company was to so control the continuous quotations of the said Exchange so as to procure a monopoly of all the trading in stocks, bonds and other securities for the members of said Exchange as well as to procure a revenue from the sale of said quotations; that in the report of the Hughes Commission referred to in said paragraph 5 the said Commission made the following report:

"It is unquestionable that only a small part of the transaction upon the Exchange is of an investment character; the substantial part may be characterized as virtually gambling."

79 That the members of the said New York Stock Exchange have been found guilty by the said Commission of manipulating prices, taking part in wash-sales and matched orders, and in fictitious trades, the latter being nothing more or less than purely bucketing the orders received from customers; the claim that the plaintiff Stock Exchange controls and uses its quotations for the purpose of wiping out bucket-shops is contradicted by the provisions of the contract itself whereby the said Exchange has parted with its right to control said quotations for the stipulated sum of $50,000 per annum to be paid by said defendant Telegraph Company.

Paragraph 6. As to the allegations of paragraph 6 this defendant says that the same are untrue so far as the allegations therein concern the reasons and object of the said Exchange in making said contract referred to in said paragraph; as to the other allegations the defendant denies the same and leaves the plaintiff to prove the same.

Paragraph 7. As to the allegations in paragraph 7 of the Bill of Complaint this defendant has no knowledge to the contrary and leaves the plaintiff to prove the same so far as the same are material.

Paragraph 8. This defendant denies that he ever had a careful or impartial investigation by the plaintiff Exchange before being refused the service which this defendant had applied for; and this defendant charges that the said Committee of the said Exchange had no sufficient or proper and competent evidence before it to justify the conclusion that this defendant desired to obtain

80 the quotations for the purpose of conducting a bucket-shop or furnishing said quotations to others who were running bucket-shops; and all such charges as made in said paragraph 8 are untrue and false.

Paragraph 9. As to the allegations in paragraph 9 of the Bill of Complaint this defendant says that so far as the same are therein stated that the same appear to be true; but this defendant says that the plaintiff has omitted to state the fact that the said Exchange was represented at a preliminary hearing before the Public Service Commission by its members and their counsel prior to any hearing on the merits being held; that the plaintiff has also failed to state that it actually intervened in the proceedings in the Supreme

Judicial Court of the Commonwealth; that the said plaintiff Stock Exchange through its counsel filed a Brief attacking the validity of the order of the said Public Service Commission upon the same grounds that the said order has been attacked by the present Bill.

Paragraph 10. As to the allegations in paragraph 10 of the Bill of Complaint the defendant makes the following answer; That the quotations of the Exchange are delivered by the Exchange to the Telegraph Company in New York City; that by delivery of the said quotations to the said defendant Telegraph Company the said Exchange has performed all the duties that it has bound itself to perform under the said contract so far as the further distribution of said quotations is concerned; that the title to the said quotations as property passes to the said defendant Telegraph Company
81 in the City of New York where the said delivery is made by the Exchange; that thereafter the defendant Telegraph Company sends the quotations from its own office in New York City to its main office in Boston over ordinary Telegraph wires in the Morse Code Telegraph Despatch form, the quotations being sent from New York City in the Morse Code form by the defendant Telegraph Company as the sender to the said defendant Telegraph Company as the receiver in Boston; that after the said quotations are received at the main offices of the defendant Telegraph Company in Boston they are then translated by a telegraph operator in the Boston office of the Telegraph Company so as to be easily read when delivered over the ticker service supplying the patrons with such service; that in order to furnish the ticker service and deliver these quotations the Telegraph Company maintains a system of telegraph wires, cables and conduits running through and under the streets of the City of Boston; that the privilege and franchise of operating and maintaining these wires, cables and conduits over and upon which the defendant Telegraph Company transmits the quotations was procured by the said defendant Telegraph Company in its capacity and character as a Public Service Corporation; that the said defendant Telegraph Company has no right to operate, maintain or procure such franchise or privileges excepting for the public benefit; that the defendant Telegraph Company could not furnish the continuous quotations of the New York Stock Exchange to its patrons in Boston as provided for in said contract without using its wires, cables and conduits running under and through the streets of Boston, and except without obtain-
82 ing such privilege and franchise solely in its capacity as a Public Service Corporation; that the plaintiff Stock Exchange has no contractual relation direct or indirect with any of the subscribers in Boston to whom this defendant Telegraph Company furnishes such service; that the said plaintiff Stock Exchange sends no messages or quotations as messages to any person in the City of Boston; that the sending of the quotations in Morse Code Telegraph Despatch form between Boston and New York is Interstate Commerce, but that the Interstate transmission of the said quotation ends upon the receipt by the defendant Telegraph Company of the said quotations in the Morse Code form at its offices in

Boston; that everything thereafter done by the said Telegraph Company in delivering the said quotations as alleged by the 10th paragraph of the plaintiff's Bill or as stated in this paragraph of the defendant's Answer is purely an Intrastate transaction and is in no way subject to the Federal statutes regulating transmissions of Interstate messages by Telegraph Companies as common carriers thereof; that it is within the police power of the Commonwealth of Massachusetts to regulate the distribution of the said quotations within the City of Boston, and that the provisions of Chapter 784 of the Acts of 1913 under which the order of the Public Service Commission was authorized to be entered and made are perfectly legal and in no way in conflict with the constitution or statutes of the United States.

Paragraph 11. As to the eleventh paragraph of the Bill of Complaint this defendant charges that the said defendant Telegraph Company and the said plaintiff Stock Exchange are in col-
83 lusion and in the conspiracy to procure by this Bill of Complaint a re-trial by this Court of the issues that were determined in the Massachusetts Courts between the parties to said proceedings, and this defendant charges that the defendant Telegraph Company is now acting and cooperating with the plaintiff so as to aid and assist the plaintiff in preventing this defendant from obtaining the benefit of the order of the said Commission, and the decree of the Supreme Judicial Court of Massachusetts, and that the said defendant Telegraph Company has no intent whatever to act than as it is requested and directed to act by the plaintiff as provided for by the said contract.

Paragraph 12. As to the allegations in paragraph 12 of the plaintiff's Bill of Complaint so far as they state conclusions of law, this defendant denies the same and this defendant states that all the orders and decrees and statutes under which said orders and decrees were issued are perfectly legal and valid and in no way violating any rights that the plaintiff Stock Exchange has secured by the constitution of the United States.

(Signed) P. H. KELLEY,
" J. L. McLEAN,
Attorneys for Calvin H. Foster.

On the third day of August, A. D. 1916, the following Order as to Parties Defendant was entered:

84 *Order.*

August 3, 1916.

DODGE, *J.*:

The motion of the complainant that this cause be set down for argument as a motion upon the objection raised by the answer of the defendant Foster that the complaint is defective for the reason that the Public Service Commission of the Commonwealth of Massachusetts has not been made a party defendant to the bill,

and the motion of the complainant that said objection be overruled coming on for argument, and the Court having heard the argument of counsel for the complainant and the defendant Foster upon said motion, thereupon, after due hearing,

It is Ordered, Adjudged, and Decreed that said objection is well taken, and that Frederick J. MacLeod, Everett E. Stone, Joseph B. Eastman, John F. Meaney, and Charles A. Russell, in their capacity as members of the Public Service Commission of the Commonwealth of Massachusetts should be made parties defendant to the bill; and thereupon the complainant moves the Court for leave to amend its bill by making the said Frederick J. MacLeod and others in their capacity as members of the Public Service Commission of the Commonwealth of Massachusetts parties defendant, and it is Ordered that said leave be given.

It is further Ordered that the Clerk forthwith issue a subpœna of the United States directed to the said Frederick J. MacLeod, Everett E. Stone, Joseph B. Eastman, John F. Meaney, and Charles A. Russell, in their capacity as members of the Public Service Commission of the Commonwealth of Massachusetts, commanding them on a day certain to appear and answer the bill, and to abide by and perform such decree as may be entered by this Court.

By the Court:

FRANK H. MASON,
Deputy Clerk.

Also on the said third day of August, A. D. 1916, the following Amendment to Bill of Complaint was filed by leave of Court:

Amendment to the Bill of Complaint.

(Filed by Leave of Court August 3, 1916.)

Now comes the complainant, by leave of Court, and files the following amendment to his bill of complaint:

(1) Insert in the opening paragraph of said bill, immediately before the words "and alleges upon information," the words—Frederick J. MacLeod, Everett E. Stone, Joseph B. Eastman, John F. Meaney, and Charles A. Russell, in their capacity as members of the Public Service Commission of the Commonwealth of Massachusetts—.

(2) Insert in the first paragraph of the prayer of said bill, immediately after the words "Calvin H. Foster," the words—and Frederick J. MacLeod, Everett E. Stone, Joseph B. Eastman, John F. Meaney, and Charles A. Russell, in their capacity as members of the Public Service Commission of the Commonwealth of Massachusetts—.

(3) Insert in the prayer for process, immediately after the words "Calvin H. Foster," the words—and Frederick J. MacLeod, Everett E. Stone, Joseph B. Eastman, John F. Meaney, and Charles A. Russell,

sell, in their capacity as members of the Public Service Commission of the Commonwealth of Massachusetts—.

HENRY G. S. NOBLE, *Complainant,*
By WALTER F. TAYLOR,
HENRY S. ROBBINS,
HENRY L. SHATTUCK,
Of Counsel.

87 On the twenty third day of August, A. D. 1916, the following Answer of Members of Public Service Commission was filed:

Answer of Members of Public Service Commission, Respondents.

(Filed August 23, 1916.)

And now come the members of the Massachusetts Public Service Commission, summoned as respondents, without waiving their motion to order certain documents filed, or their motion to strike out portions of the complainant's bill, or their motion to dismiss, but especially insisting thereon as fully as though incorporated verbatim herein, and for answer say,—

1. The matters alleged in paragraph 1 are not within their personal knowledge and, therefore, they deny the same.

2. The matters alleged in paragraph 2 of the bill of complaint are not within their personal knowledge and, therefore, they deny the same.

3. The matters alleged in paragraph 3 of the bill of complaint are not within their personal knowledge and, therefore, they deny the same.

4. The matters alleged in paragraph 4 of the bill of complaint are not within their personal knowledge and, therefore, they deny the same.

5. The matters alleged in paragraph 5 of the bill of complaint are not within their personal knowledge and, therefore, they deny the same.

6. The matters alleged in paragraph 6 of the bill of complaint are not within their personal knowledge, and, therefore, they deny the same.

88 7. The matters alleged in paragraph 7 of the bill of complaint are not within their personal knowledge and, therefore, they deny the same.

8. The matters alleged in paragraph 8 of the bill of complaint are not within their personal knowledge and, therefore, they deny the same.

9. These respondents admit the allegations of paragraph 9 of the bill of complaint, except that they deny that the terms of the order of the Public Service Commission or of the prayer of their bill of complaint in the Massachusetts Supreme Court or of the decree of the Massachusetts Supreme Court are correctly summarized or set forth,

and call upon the complainant to produce accurate and complete copies thereof. They further deny that on the fifteenth day of April, 1915, they filed in the Massachusetts Supreme Court a bill of complaint, as alleged in said paragraph, but say that they did file such a bill on the fifteenth day of October, 1915.

10. For the purposes of this suit they admit the allegations of paragraph 10 of the bill of complaint, except as qualified by the allegations herein made. And further answering, they say that the information or quotations received by the Western Union Telegraph Company as its property in New York are transmitted by said company to Boston in the Morse Code, and at or after receipt in Boston the same are translated by employees of the Western Union Telegraph Company and then transmitted by ticker instruments in ordinary letters and figures from the office of the Western Union Telegraph Company in Boston to individuals and persons receiving the same, all within the Commonwealth of Massachusetts. Such transmission is made, and can only be made, by the use of wires passing under, along and through public streets and highways under franchises granted directly or indirectly by the Commonwealth
89 of Massachusetts and subject to its control and regulation; that such transmission does not constitute in any way the sending or transmission of a message, nor is it an act with reference to which the Congress of the United States has in any way legislated or regulated in a manner inconsistent with or so as to prevent such regulation by the Commonwealth of Massachusetts as has taken place or been specifically applied in the present case.

11. These respondents deny the allegations of paragraph 11.

12. These respondents deny the allegations of paragraph 12.

13. These respondents deny the allegations of paragraph 13.

14. And further answering, these respondents allege in bar of these proceedings that the Act of the Legislature of Massachusetts (St. 1913, c. 784) and acts in amendment thereof and addition thereto, confer upon these respondents no power or authority directly to enforce any order made by them, but that such enforcement must be and is obtained by application to the courts of the Commonwealth of Massachusetts; that a bill in equity was filed by them October 15, 1915, seeking to enforce the following order entered by them:

"Order.

It appearing that the Gold and Stock Telegraph Company, by the Western Union Telegraph Company, lessee, and the United Telegram Company have without just cause denied and refused to supply to Calvin H. Foster the continuous quotations of the New York Stock Exchange by means of ticker service now furnished and supplied to others, said denial of service is held to constitute an unjust and unlawful discrimination, and it is

Ordered, That the Gold and Stock Telegraph Company, by The Western Union Telegraph Company, lessee, and The United Telegram Company shall forthwith remove said discrimination."

That upon such bill a final decree was entered by the Supreme Judicial Court of Massachusetts, enjoining the Western Union
90 Telegraph Company forthwith to comply with the aforesaid order of the Public Service Commission. The Western Union Telegraph Company has filed a petition for a writ of error to the Supreme Court of the United States with the Chief Justice of said Supreme Judicial Court, upon which petition an order has been made superseding said final decree and suspending its operation pending decision upon said writ of error by the Supreme Court of the United States; that no other action to enforce said order has been taken by these respondents or threatened to be taken by them. Under the terms of the contract between the New York Stock Exchange and the Western Union Telegraph Company annexed to the complainant's bill of complaint the New York Stock Exchange has a right to intervene in any suit such as was brought by these respondents against the Western Union Telegraph Company, as hereinbefore alleged, and it has the right to intervene and be heard upon said writ of error, and in fact did file a brief in said suit with the Supreme Judicial Court of Massachusetts.

15. These respondents further say that certain persons, members of the New York Stock Exchange, who are real parties in interest herein, are citizens and residents of the District of New York, and certain others are citizens and residents of the District of Massachusetts and, accordingly, this court does not have jurisdiction of this proceeding.

16. The Western Union Telegraph Company is a public service corporation engaged in the business of transmitting intelligence by electricity by means of telephone and telegraph lines and other methods or systems of communication and of conveniences, appliances, instrumentalities and equipment utilized in connection therewith or appertaining thereto, and all provisions of the contract alleged and relied upon in the complainant's bill which tend to compel said company to discriminate between members of the
91 public or to prevent it from furnishing to all persons such services as it renders to any, and especially the provision thereof limiting the right of said Western Union Telegraph Company to furnish quotations only to such persons as may be approved by the New York Stock Exchange are illegal and void.

17. The Western Union Telegram Company is a public service corporation and a telegraph company engaged in sending messages from one state, territory or district of the United States to other states, territories and districts of the United States, and a common carrier within the meaning and subject to the provisions of the Act of Congress entitled "An Act to Regulate Commerce," approved February 4, 1887, as amended. As such common carrier said telegraph company makes and collects substantial charges for all messages transmitted in behalf of large numbers of and in fact practically all persons and allows to such persons no rebate from such charges. If the transaction contemplated by and provided for in the existing contract between the complainant and said telegraph company constitutes the sending of a message or messages within the terms of said act, as

alleged or implied by the complainant's bill, which these respondents deny, then the terms of said contract call for and attempt to create an undue and unreasonable preference or advantage to the complainant, the New York Stock Exchange and the members thereof and calls and attempts to create an unlawful discrimination in favor of the complainant and others contrary to the terms of section 3 of said act.

Wherefore, these respondents pray that the complainant's bill of complaint be dismissed, and for their costs.

By their attorney,

H. WARE BARNUM,
Assistant Attorney-General.

92 On the said twenty third day of August, A. D. 1916, the following Motion of Public Service Commission to Dismiss was filed:

Motion to Dismiss.

(Filed August 23, 1916.)

And now come the members of the Massachusetts Public Service Commission, summoned as respondents in this suit, and move that the complainant's bill of complaint be dismissed for the following reasons:

1. The district in which the complainant resides is not stated nor his citizenship averred.

2. It appears from the bill of complaint that the rights therein asserted belong to an association or partnership and neither the names of the actual owners of the rights sought to be enforced nor the citizenship and residence of such persons are stated.

3. No valid authority for the complainant to prosecute this proceeding without making all owners of the rights sought to be enforced parties or disclosing their residence and citizenship is alleged, since the statute of the State of New York referred to cannot authorize suit in the District of Massachusetts.

4. The districts in which the true parties complainant reside are not stated, and if the same were stated it would appear that this court has no jurisdiction on the ground of diversity of citizenship.

5. This court has no jurisdiction of this proceeding. It
93 does not appear that jurisdiction exists on the ground of diversity of citizenship, and no federal question is properly raised.

6. If any matter of interstate commerce is involved, as alleged in the complainant's bill, the contract annexed to the complainant's bill of complaint, on which the complainant's rights are based, is illegal and void because it calls for and creates, contrary to the provisions of the Interstate Commerce Act, and especially of the Act to Regulate Commerce, approved February 4, 1887, section 3, an unlawful discrimination in favor of the complainant or complainants, and a court of equity will not enforce such a contract.

7. It appears that no right of the complainant has been infringed or threatened by these respondents, or by any act of theirs.

By Their Attorney, H. WARE BARNUM,
Assistant Attorney-General.

On the twelfth day of September, A. D. 1916, the following Stipulation, incorporating certain documents in the bill, was filed:

94 *Stipulation.*

(Filed September 12, 1916.)

It is stipulated by the parties in the above entitled cause that the copy of the order of the Public Service Commission of Massachusetts dated September 7, 1915, as set out in the answer of said Public Service Commission in this case, is a correct copy of said order, and for the purposes of the motions filed herein by said Public Service Commission, may be considered a part of complainant's bill.

It is further stipulated that the annexed copy of the decree of the Supreme Judicial Court of Massachusetts, in the case of Frederick J. Macleod et al. v. The Western Union Telegraph Company and The United Telegram Company, is a correct copy of said decree, and for the purposes of said motions filed herein by said Public Service Commission may likewise be considered a part of complainant's bill.

HENRY G. S. NOBLE, *Complainant*,
By HENRY S. ROBBINS,
ROPES, GRAY BOYDEN & PERKINS,
Attorneys.

THE WESTERN UNION TELEGRAPH COMPANY,
By ARTHUR LORD, *Attorney.*

CALVIN H. FOSTER,
By *his* P. H. KELLEY, *Attorney.*

PUBLIC SERVICE COMMISSION OF MASSACHUSETTS,
By H. WARE BARNUM,
Asst. Attorney-Genl. of Mass.

95 COMMONWEALTH OF MASSACHUSETTS,
Suffolk, ss:

Supreme Judicial Court.

In Equity.

No. 24561.

FREDERICK J. MACLEOD et al.

v.

THE WESTERN UNION TELEGRAPH COMPANY and THE UNITED TELEGRAM COMPANY.

Final Decree.

This case came on to be heard after rescript from the full bench, and thereupon, upon consideration thereof, it is ordered, adjudged and decreed that the respondents, The Western Union Telegraph Company and The United Telegram Company, be commanded and enjoined forthwith to comply with the following order of the Public Service Commission:

Order of Public Service Commission.

It appearing that the Gold and Stock Telegraph Company, by the Western Union Telegraph Company, lessee, and the United Telegram Company, have without just cause denied and refused to supply to Calvin H. Foster the continuous quotations of the New York Stock Exchange by means of ticker service now furnished and supplied to others, said denial of service is held to constitute an unjust and unlawful discrimination, and it is

Ordered, That the Gold and Stock Telegraph Company, by The Western Union Telegraph Company, lessee, and The United Telegram Company, shall forthwith remove said discrimination.

By the Court,

JOHN F. CRONIN, *Clerk.*

June 30, 1916.

96 On the fifth day of February, A. D. 1917, the following Final Decree is entered:

"Final Decree on Motion to Dismiss Filed by Massachusetts Public Service Commission.

February 5, 1917.

DODGE, *J.* This cause came on to be heard at this term upon the motion to dismiss filed by Massachusetts Public Service Commission

and said motion was argued by counsel, and upon consideration of the bill of complaint and motion to dimiss, but without the submission of evidence or further hearing of the parties; the court being of the opinion that it is without jurisdiction of said cause as to any of said defendants and also that, even if this court has jurisdiction, the bill does not state a case entitling the complainant to the relief prayed for.

It is ordered, adjudged and decreed that the motion to dismiss filed by the Massachusetts Public Service Commission be allowed, and that the bill of complaint be dismissed, as to all the defendants for want of jurisdiction and also for want of equity appearing in the bill.

By the Court:

JOHN E. GILMAN, JR.,
Deputy Clerk.

From the foregoing final Decree, the plaintiff claims an appeal to the Supreme Court of the United States and gives good and sufficient security that he will prosecute his appeal to effect, and answer all damages and costs if he fail to make his plea good; and said appeal is allowed accordingly.

97 *Opinion.*

December 19, 1916.

On Motion to Dismiss Filed August 23, 1916, by Massachusetts Public Service Commission.

DODGE, *J.:*

The members of the above Commission made defendants by an amendment to the bill filed August 3, 1916, having appeared in compliance with the summons issued, filed this motion to dismiss, which asserts that the Court is without jurisdiction; and also that the contract whereon the bill bases the plaintiff's alleged rights is illegal and void because in violation of the Interstate Commerce Acts if these apply as claimed in the bill.

1. The only jurisdictional question presented is whether or not the allegations of the bill present a federal question. It is conceded that diverse citizenship of the parties does not sufficiently appear.

The bill alleges (par. 12) that the order made by the Public Service Commission, the confirming order of the Massachusetts Supreme Judicial Court, and the Massachusetts statute whereon both are based, as set forth in the preceding paragraphs of the bill, are unconstitutional, in that they deprive the New York Stock Exchange, a voluntary association represented by the plaintiff as its president, of its property, without due process of law.

98 The relief prayed for is (1) that said statute be declared unconstitutional so far as it empowers the Commission to make or enforce such order, (2) that the order be declared void, (3) that the defendant Telegraph Company be enjoined from obeying

it, and the defendant Foster from accepting the quotations which said company has been ordered to furnish him, except upon compliance with the plaintiff's regulations respecting them, which regulations said company is bound to follow by the terms of its contract with said Stock Exchange.

The motion to dismiss asserts that no right of the Stock Exchange has been infringed or threatened by said Commission or by any act of theirs so far as shown by the bill.

On behalf of the Commission it is conceded that in the information consisting of the quotations produced by sales of stock and bonds on its floor the Stock Exchange has, to a certain extent, a property right. By its above contract with the Telegraph Company it has agreed, as set forth in the bill, to furnish said quotations to the latter and has authorized said Telegraph Company to furnish them to any person anywhere in the United States and Canada outside a certain district, with the qualification that they shall not be furnished by continuous service as defined in the contract to any person whose application therefor, to be made in a prescribed form, has not been duly approved by said Stock Exchange. The contract further provided that in case of failure on the part of any person whose application has been approved to comply with the conditions, restrictions and limitations therein contained, said Telegraph Company would terminate the contract under which such person might be receiving said quotations and discontinue furnishing them to him. The Telegraph Company was left to fix its own terms for the service it was thus authorized to render with the person receiving it. The contract further provided that said
99 Stock Exchange should receive $50,000. a year from said Telegraph Company. The plaintiff's claim, as stated in Par. 12 of its bill, is that said market quotations when collected and distributed as above constitute its property, that, being its property, it may fix a price at which it will sell the same and select persons to whom it will furnish the same, that it has the right to avail itself of the service of any common carrier operating either wholly within the State or beyond the limits of a single State, for the purpose of delivering its said quotations to persons whose application therefor it shall accept; that the above Statute and orders thereon based require said Telegraph Company to break said contract by giving said quotations to said defendant Foster (whose application for service it has disapproved) and therefore deprive it of its said property without due process of law.

The Commission found, as is set forth in the bill, upon Foster's complaint to it, that refusal to transmit said quotations to him upon the same terms that they were transmitted to others was unlawful discrimination on the part of said Telegraph Company; and its orders to said company, afterward confirmed by the Massachusetts Court, was "to remove said discrimination forthwith." It contends here that its said finding and order in no way took or injured any property right of the Stock Exchange either with or without due process of law.

A copy of the above contract being annexed to the bill, it is thus

before the Court in full. While it remains in force, whatever rights with regard to the quotations to which it relates in the plaintiff, they are not such rights as Par. 12 of the bill asserts, because the plaintiff cannot claim to be delivering said quotations through the services of a common carrier of its own selection, to persons in Massachusetts selected by it, at prices fixed by it. Such a claim is incon-
100 sistent with the construction of the same contract adopted by the Supreme Court of Erie County, New York, New York, in a decision formed by the Appellate Division November 17, 1915, (Tucker v. Western Union Company, 156 N. Y. Supp. 1148), copy whereof is before me, and with that adopted by the Massachusetts Supreme Judicial Court in the case to which this bill refers (224 Mass. 365). According to these decisions, though the Telegraph Company's business is that of a common carrier and its facilities as such are availed of in making the contract, it is not, under the contract, transmitting Stock Exchange messages for hire as a common carrier; if it were they would be paid for by the Exchange. On the contrary the Telegraph Company buys the quotations from the Exchange for a substantial price, and the rights of the Exchange in them pass to and become vested in the Telegraph Company to such an extent as enables the latter, having thus acquired them, to deal with them as its own, subject to the limitations agreed on with the Exchange and to those imposed by law. With these views as to the Telegraph Company's position under the contract I agree, and; adopting them, I am unable to hold that there remain in the plaintiff such property rights in the quotations in question as it here claims.

The plaintiff has not undertaken to show, and I am unable to see, how there can remain in it under said contract property rights of any description other than the above with which the order complained of can be said to interfere. The allegation in Par. 12 of the bill, that the order requires the Telegraph Company to break its contract "by giving said quotations to said Foster," must be considered in connection with what appears from the preceding paragraphs, which show that the Telegraph Company is required to give the quotations to Foster only because of the Commission's finding that its refusal to do so was without just cause and was there-
101 fore discrimination contrary to the Massachusetts Statute. Nowhere in the bill is it claimed or suggested that said finding was unjustified by the evidence whereon the Commission acted or that the order was unjustified under the Statute if the finding was justified. The contract having been made, as has been stated, while the statute was in force, must be presumed to have been made in view of it and to have contemplated that the Telegraph Company could not be required under it to make any unlawful discrimination in furnishing the quotations.

2. Discrimination without just cause on the part of a telegraph company is forbidden both by the Massachusetts laws, and by the Acts of Congress regulating interstate commerce. The plaintiff, after allegations setting forth in some detail the method followed by it in transmitting these quotations from New York to the Telegraph Company in Boston and by the latter in distributing them to

its customers in Boston, claims in Par. 10 of its bill that the said transmission and distribution is interstate commerce, which Congress alone has power to regulate, that Congress has vested in the Interstate Commerce Commission "exclusive jurisdiction of all proceedings, suits or actions affecting or controlling the distribution of said quotations," and that the Massachusetts legislation establishing the State Public Service Commission, with jurisdiction to hear complaints respecting "the distribution of said quotations," the Commission's order "directing the delivery of said quotations to said Foster" and the order of the State Court confirming the order of the Commission are all of them void.

If this claim can be maintained and if it can be said that the order requiring discontinuance of the unlawful discrimination deprived the plaintiff of any property right belonging to it, it was not so deprived by due process of law, but by a Commission and a Court without power to act in the matter.

The same facts in substance as the plaintiff has alleged here in support of its above claim appear to have been brought be-
102 fore the Massachusetts Court upon the Telegraph Company's petition to review the State Commission's order. Western Union &c. Co. v. Foster, above cited, 224 Mass. 365. The present plaintiff was not made a party in that case and the Court held that it was not a necessary party; but in the facts alleged by it here I find nothing to distinguish this case from that there considered, so far as the present question is concerned. Upon full and careful consideration it was there held that the Interstate Commerce Acts did not apply to or cover the local distribution of these quotations, bought by the Telegraph Company in interstate commerce, but delivered by it in intrastate commerce under the circumstances disclosed. With this conclusion and the reasoning of the Court in support thereof, I agree. While transmission of the quotations from the plaintiff in New York to the Telegraph Company in Boston was governed by the Interstate Commerce Acts, none of the arguments relied on to show that those Acts also continued to govern their further transmission by the Telegraph Company from Boston to applicants for them in Massachusetts seem to me adequate for the purpose, in view of the rights in them passing under the contract to the Telegraph Company, as above. I therefore consider the facts alleged in the bill insufficient to warrant the plaintiff's claim that the State legislation was inapplicable and the State authorities without jurisdiction.

The motion is therefore granted and there may be a decree dismissing the bill.

103 *Plaintiff's Petition for Appeal.*

(Filed February 5, 1917.)

The above named complainant, conceiving himself to be aggrieved by the decree of this court, entered on the 5th day of February, 1917, dismissing the above entitled suit, hereby appeals from

said decree to the Supreme Court of the United States, for the reasons specified in the assignments of error this day filed herein, and prays that this appeal may be allowed, and that a transcript of the record and all proceedings herein may be forthwith transmitted to said Supreme Court.

HENRY G. S. NOBLE,
By HENRY S. ROBBINS,
WALTER F. TAYLOR,
HENRY L. SHATTUCK,
His Solicitors.

104 *Assignment of Errors.*

(Filed February 5, 1917.)

Now comes the complainant, and files the following assignments of error, for grounds of reversal on appeal in the above entitled cause:

1. That the District Court erred in dismissing said cause for want of jurisdiction.

2. That the District Court erred in not retaining jurisdiction thereof and proceeding to a hearing of the merits thereof.

3. That the District Court erred in not entering a decree on the merits, adjudging the statute of Massachusetts, so far as its attempts to confer power upon the Public Service Commission of Massachusetts, to make or enforce its said order of September 7, 1915, or any other order directing the Western Union Telegraph Company to furnish the said quotations to said Calvin H. Foster, contrary to the Constitution of the United States and void.

4. That said District Court erred in not entering a decree upon the merits, adjudging that said order of said Public Service Commission, entered on the 7th day of September, 1915, directing said Western Union Telegraph Company to furnish said Foster said
105 quotations, did not constitute any reason or excuse why said Western Union Telegraph Company should not, as respects said Foster, comply with said contract with said Stock Exchange.

5. That said District Court erred in not entering a final decree in said cause, permanently restraining the said Western Union Telegraph Company from delivering to said Foster, and said Foster from receiving from said Western Union Telegraph Company, said continuous quotations of said Stock Exchange until said Foster shall have first lawfully acquired the right to receive said quotations either by contract or purchase from said Stock Exchange, or with its consent or approval, from some telegraph company authorized by said Stock Exchange to distribute said quotations.

6. That the said District Court erred in not retaining said cause for a hearing upon the merits and in not entering a decree for complainant pursuant to the prayer of said bill.

7. That said Court erred in dismissing said bill for want of equity.

HENRY G. S. NOBLE,
By HENRY S. ROBBINS,
WALTER F. TAYLOR,
HENRY L. SHATTUCK,
His Solicitors.

106 *Bond on Appeal.*

(Filed and Approved February 5, 1917.)

Know all men by these presents, That we, Henry G. S. Noble as President of the New York Stock Exchange, as Principal, and the National Surety Company, a New York corporation, as Surety, are held and firmly bound unto Western Union Telegraph Company, Calvin H. Foster and Frederick J. Macleod, Everett E. Stone, Joseph B. Eastman, John F. Meaney, and Charles A. Russell, constituting the Public Service Commission of the State of Massachusetts, in the full and just sum of Five Hundred Dollars ($500.00) to be paid to the said Western Union Telegraph Company, Calvin H. Foster, and Frederick J. Macleod, Everett E. Stone, Joseph B. Eastman, John F. Meaney, and Charles A. Russell for the payment of which, well and truly to be made, we bind ourselves, our successors and assigns, jointly and severally by these presents.

Sealed with our seals, and dated this 5th day of February, A. D. 1917.

Whereas, lately at the December Term, A. D. 1916, of the District Court of the United States, for the District of Massachusetts, in a suit pending in said court between said Henry G. S. Noble, as President of the New York Stock Exchange as complainant, and the said Western Union Telegraph Company, Calvin H. Foster, and Frederick J. Macleod, Everett E. Stone, Joseph B. Eastman, John F. Meaney, and Charles A. Russell, constituting said Public Service Commission of Massachusetts, as defendants, a decree was entered on the 5th day of February, 1917, dismissing said bill, and said Henry G. S. Noble as President of the New York Stock Exchange has obtained an order of appeal of said court to reverse the decree in the aforesaid suit, and a citation directed to the said Western Union Telegraph Company, Calvin H. Foster, and Frederick J. Macleod, Everett E. Stone, Joseph B. Eastman, John F. Meaney, and Charles A. Russell, constituting the said Public Service Commission of Massachusetts, citing and admonishing them to be and appear in the Supreme Court of the United States, within thirty (30) days from and after the date of said citation.

Now, the conditions of the above obligation are such, That if the said Henry G. S. Noble as President of the New York
107 Stock Exchange shall duly prosecute his said appeal with effect, and answer all damages and costs, if he shall fail to

make good his plea, then the above obligation to be void, else to remain in full force and effect.

HENRY G. S. NOBLE. [SEAL.]
NATIONAL SURETY COMPANY, [SEAL.]
By JOHN A. CURRAN,
Resident Vice-President.

Attest:

COLLINS GRAHAM,
Resident Assistant Secretary.

Feb. 5, 1917.
Bond approved.

FREDERIC DODGE,
United States Circuit Judge.

STATE OF NEW YORK,
City and County of New York, ss:

On this second day of February, 1917, personally appeared before me Henry G. S. Noble to me known and known to me to be the person described in and who executed the foregoing instrument and acknowledged to me that he executed the same.

GEORGE W. MULLER, [SEAL.]
Notary Public, Kings County.

Certificate filed in New York County. Kings County Register's No. 8125. Kings County Clerk's No. 143. New York County Register's No. 8321. New York County Clerk's No. 382.

108 *Order Allowing Appeal.*

February 5, 1917.

Now comes the complainant, and it appearing to the court that a petition for appeal and assignments of error have been filed herein:

It is ordered That an appeal to the Supreme Court of the United States, from the decree entered herein on the 5th day of February, 1917, be, and the same is, allowed, and that for the purpose of enabling said court to decide said appeal, a transcript of the record herein be forthwith transmitted to said court, and that complainant file his appeal bond in the sum of $500, with surety to be approved by this court, and this court, contemporaneously with the entry of this order files a certificate respecting jurisdiction as contemplated by Section 238 of the Act of Congress.

By the Court:

JOHN E. GILMAN, Jr.,
Deputy Clerk.

109 *Citation on Appeal.*

UNITED STATES OF AMERICA, ss:

The President of the United States to the Western Union Telegraph Company, a corporation organized and existing under the laws of the State of New York, doing business in the District of Massachusetts, and Calvin H. Foster, a citizen and resident of the State and District of Massachusetts; Frederick J. MacLeod, Everett E. Stone, Joseph B. Eastman, John F. Meaney, and Charles A. Russell, as members of the Public Service Commission of the Commonwealth of Massachusetts, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, in the city of Washington, D. C., on the seventh day of March next, pursuant to an Appeal duly obtained from a decree of the District Court of the United States for the District of Massachusetts, wherein Henry G. S. Noble, President of the New York Stock Exchange, a voluntary unincorporated association, is appellant and you are appellees, to show cause, if any there be, why the said decree, entered against the said appellant, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Frederic Dodge, Circuit Judge, duly assigned to hold the District Court of the United States for the District of Massachusetts, this fifth day of February, in the year of our Lord one thousand nine hundred and seventeen.

FREDERIC DODGE,
United States Circuit Judge.

110 *Acknowledgment of Service on Citation on Appeal.*

Boston, Feb. 13, 1917.

I hereby accept service for Calvin H. Foster of the within citation.

P. H. KELLEY.

Service of the within citation is hereby accepted for the within named members of the Mass. Public Service Commission.

H. WARE BARNUM,
Asst. Atty. Genl.

Service of the within citation is hereby accepted for the Western Union Telegraph Company.

ARTHUR LORD.

111 *Certificate of Question of Jurisdiction.*

(Filed February 6, 1917.)

UNITED STATES OF AMERICA,
District of Massachusetts:

District Court.

HENRY G. S. NOBLE

v.

WESTERN UNION TELEGRAPH COMPANY et al.

In pursuance of Section 238 of the Judicial Code this Court certifies to the Supreme Court the following question of jurisdiction in the above entitled case:

Whether the bill in this case presents a controversy which arises under the Constitution or laws of the United States within the meaning of Section 24 of the Judicial Code.

FREDERIC DODGE,
U. S. Circuit Judge.

112 *Præcipe.*

(Filed February 13, 1917.)

Now comes the appellant, the complainant in the above entitled action, and requests that the following portion of the record may be incorporated in the transcript on appeal:

Bill of complaint, filed July 6, 1916.
Answer of the defendant, Calvin H. Foster.
Answer of the defendant, Western Union Telegraph Co.
Answer of members of Public Service Commission.
Order entered August 3, 1916.
Amendment to bill of complaint, filed August 3, 1916.
Motion to dismiss, filed August 23, 1916.
Stipulation, filed September 12, 1916.
Opinion of Dodge, J., filed December 19, 1916, on motion to dismiss.
Decree on motion to dismiss, entered February 5, 1917.
Complainant's petition for appeal, filed February 5, 1917.
Complainant's assignment of errors, filed February 5, 1917.
Order on petition for appeal, entered February 5, 1917.

Certification to the Supreme Judicial Court, filed February 1917.
Bond on Appeal.
Præcipe.

By His Attorneys,
ROPES, GRAY, BOYDEN & PERKINS.
HENRY L. SHATTUCK.

Assented to and adopted:
P. H. KELLEY,
Attorney for Calvin H. Foster.
H. WARE BARNUM,
Asst. Atty. Genl., for Members of Mass. Public Service Commission.
ARTHUR LORD,
For Western Union Telegraph Co.

113 *Clerk's Certificate.*

UNITED STATES OF AMERICA,
District of Massachusetts, ss:

I, William Nelson, Clerk of the District Court of the United States for the District of Massachusetts, certify that the foregoing is the record agreed upon by the parties as the appeal record in the cause in equity entitled, No. 738, Henry G. S. Noble, Plaintiff, v. Western Union Telegraph Company et al., Defendants, in said District Court determined, together with the original Citation issued upon the appeal of the plaintiff in said cause, with the Acknowledgments of Service thereon.

In testimony whereof, I hereunto set my hand and affix the seal of said District Court, at Boston, in said District, this twenty-third day of February, A. D. 1917.

[Seal of the District Court, Massachusetts.]

WILLIAM NELSON, *Clerk.*

Endorsed on cover: File No. 25,791. Massachusetts D. C. U. S. Term No. 419. Henry G. S. Noble, as President of the New York Stock Exchange, appellant, vs. The Western Union Telegraph Company, Calvin H. Foster, et al. Filed February 28th, 1917. File No. 25,791.